IN THE NAME OF GOD

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
CERTAIN IRANIAN ASSETS

(ISLAMIC REPUBLIC OF IRAN V. UNITED STATES OF AMERICA)

ATTACHMENTS AND ANNEXES TO THE REPLY
OF THE ISLAMIC REPUBLIC OF IRAN

VOLUME I

17 August 2020

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Attachment 1

U.S. courts judgments against Iran & Iranian State entities as of 31 December 2019

U.S. courts Judgments against Iran & Iranian State Entities
As of 31 December 2019

No.	Plaintiff	Defendant	Case No.	Date of Action	Location of Alleged Action	Date of Judgment	Compensation (US$)	Punitive Damage (US$)
1	Flatow	Government of I. R. Iran	1:97-cv-00396	26/02/1997	Israel	11/03/1998	22 500 000	225 000 000
2	Cicipio	Government of I. R. Iran	1:96-cv-01805	31/07/1996	Lebanon	10/09/1998	65 000 000	None
3	Anderson	Government of I. R. Iran	1:99-cv-00698	22/03/1999	Lebanon	24/02/2000	41 200 000	300 000 000
4	Eisenfeld	Government of I. R. Iran	1:98-cv-01945	10/08/1998	Israel	11/07/2000	24 161 000	300 000 000
5	Higgins	Government of I. R. Iran	1:99-cv-00377	17/02/1999	Lebanon	21/09/2000	55 431 937	300 000 000
6	Elahi	Government of I. R. Iran	1:99-cv-02802	22/10/1999	France	20/12/2000	11 740 035	300 000 000
7	Sutherland	Government of I. R. Iran	1:99-cv-03279	13/12/1999	Lebanon	25/06/2001	53 400 000	300 000 000
8	Polhill	Government of I. R. Iran	1:00-cv-01798	27/07/2000	Lebanon	23/08/2001	31 500 000	300 000 000
9	Jenco	Government of I. R. Iran	1:00-cv-00549	15/03/2000	Lebanon	27/08/2001	14 640 000	300 000 000
10	Wagner	Government of I. R. Iran	1:00-cv-01799	27/07/2000	Beirut	06/11/2001	16 280 000	300 000 000
11	Weinstein	Government of I. R. Iran	1:00-cv-02601	27/10/2000	Israel	06/02/2002	33 284 164	150 000 000
12	Hegna	Government of I. R. Iran	1:00-cv-00716	03/04/2000	Greece	07/02/2002	42 000 000	333 000 000
13	Stethem	Government of I. R. Iran	1:00-cv-00159	28/01/2000	Greece	19/04/2002	21 200 000	300 000 000
14	Carlson	Government of I. R. Iran	1:00-cv-01309	06/06/2000	Greece	19/04/2002	7 800 000	300 000 000
15	Turner	Government of I. R. Iran	1:01-cv-01981	18/09/2001	Lebanon	02/10/2002	27 310 000	300 000 000
16	Surette	Government of I. R. Iran	1:01-cv-00570	19/03/2001	Lebanon	01/11/2002	18 961 284	300 000 000
17	Rafii	Government of I. R. Iran	1:01-cv-00850	18/04/2001	France	02/12/2002	5 000 000	300 000 000
18	Cronin	Government of I. R. Iran	1:99-cv-02890	29/10/1999	Lebanon	18/12/2002	1 200 000	300 000 000
19	Kerr	Government of I. R. Iran	1:01-cv-01994	20/09/2001	Lebanon	11/02/2003	33 025 296	None
20	Weir	Government of I. R. Iran	1:01-cv-01303	12/06/2001	Lebanon	02/04/2003	11 450 000	300 000 000
21	Stern	Government of I. R. Iran	1:00-cv-02602	27/10/2000	Israel	17/07/2003	13 000 000	300 000 000
22	Steen	Government of I. R. Iran	1:00-cv-03037	21/12/2000	Lebanon	31/07/2003	42 750 000	300 000 000
23	Tracy	Government of I. R. Iran	1:01-cv-02517	06/12/2001	Lebanon	21/08/2003	18 509 999	None
24	Reiger	Government of I. R. Iran	1:01-cv-01302	12/06/2001	Lebanon	08/09/2003	5 321 520	None
25	Campuzano	Government of I. R. Iran	1:00-cv-02328	29/09/2000	Israel	10/09/2003	40 963 607	112 500 000
26	Rubin	Government of I. R. Iran	1:01-cv-01655	31/07/2001	Israel	10/09/2003	71 500 000	187 500 000
27	Leah S.	Government of I. R. Iran	1:00-cv-02096	31/08/2000	Israel	05/11/2003	12 000 000	120 000 000
28	Kapar	Government of I. R. Iran	1:02-cv-00078	16/01/2002	Greece	27/09/2004	13 500 000	None
29	Dodge	Government of I. R. Iran	1:03-cv-00252	14/02/2003	Lebanon	17/03/2005	5 670 000	None
30	Salazar	Government of I. R. Iran	1:02-cv-00558	22/03/2002	Beirut	12/05/2005	18 297 000	None
31	Cicipio Puelo	Government of I. R. Iran	1:01-cv-01496	09/07/2001	Lebanon	10/07/2005	91 000 000	None
32	Dammarell	Government of I. R. Iran	1:01-cv-02224	29/10/2001	Beirut	14/12/2005	316 919 657	None
33	Holland	Government of I. R. Iran	1:01-cv-01924	13/09/2001	Beirut	01/02/2006	25 241 486	None
34	Prevatt	Government of I. R. Iran	1:02-cv-01775	09/09/2002	Beirut	27/03/2006	2 500 000	None
35	Boddof	Government of I. R. Iran	1:02-cv-01991	08/10/2002	Israel	29/03/2006	16 988 300	300 000 000
36	Greenbaum	Government of I. R. Iran	1:02-cv-02148	23/10/2002	Israel	31/08/2006	19 879 023	None
37	Blais	Government of I. R. Iran	1:02-cv-00285	13/02/2002	Saudi Arabia	29/09/2006	28 801 792	None
38	Jacobson	Government of I. R. Iran	1:02-cv-01365	08/04/2002	Lebanon	06/10/2006	6 400 000	None
39	Heiser I	Government of I. R. Iran	1:00-cv-02329	29/09/2000	Saudi Arabia	22/12/2006	254 431 903	None
40	Sisso	Government of I. R. Iran	1:05-cv-00394	24/02/2005	Israel	05/07/2007	5 000 000	None
41	Bennet	Government of I. R. Iran	1:03-cv-01486	02/07/2003	Israel	30/08/2007	12 907 548	None
42	Peterson	Government of I. R. Iran	1:01-cv-02094	03/10/2001	Beirut	07/09/2007	2 656 944 877	None
43	Nikbin	Government of I. R. Iran	1:04-cv-00008	05/01/2004	Iran	28/09/2007	2 600 000	None
44	Welch	Government of I. R. Iran	1:01-cv-00863	19/04/2001	Beirut	15/10/2007	32 698 304	None
45	Bakhtiar	Government of I. R. Iran	1:02-cv-00092	22/01/2002	France	18/12/2007	12 000 000	None
46	Levin	Government of I. R. Iran	1:05-cv-02494	30/12/2005	Lebanon	14/01/2008	28 807 719	None
47	Ben-Rafael	Government of I. R. Iran	1:06-cv-00721	21/04/2006	Argentina	25/02/2008	62 441 839	None
48	Beer I	Government of I. R. Iran	1:08-cv-01807	14/03/2006	Israel	17/07/2008	13 000 000	0
49	Acosta	Government of I. R. Iran	1:06-cv-00745	26/04/2006	United States	06/08/2008	50 172 000	300 000 000
50	Rimkus I	Government of I. R. Iran	1:08-cv-01615	19/06/2006	Saudi Arabia	26/08/2008	5 000 000	0
51	Kirschenbaum	Government of I. R. Iran	1:08-cv-01814	17/10/2008	Israel	26/08/2008	13 750 000	300 000 000
52	Wachsman	Government of I. R. Iran	1:06-cv-00351	28/02/2006	Israel	27/03/2009	25 040 289	None
53	Heiser II	Government of I. R. Iran	1:00-cv-02329	29/09/2000	Saudi Arabia	30/09/2009	36 658 063	300 000 000
54	Belkin	Government of I. R. Iran	1:06-cv-00711	20/04/2006	Israel	30/09/2009	18 525 763	None
55	Brewer	Government of I. R. Iran	1:08-cv-00534	22/03/2008	Beirut	15/10/2009	9 500 000	300 000 000
56	Kilburn	Government of I. R. Iran	1:01-cv-01301	06/12/2001	Lebanon	30/03/2010	11 030 000	None
57	Spencer	Government of I. R. Iran	1:06-cv-00750	24/04/2006	Beirut	31/03/2010	12 565 922	12 500 000
58	Bonk	Government of I. R. Iran	1:08-cv-01237	24/07/2008	Beirut	31/03/2010	158 750 000	170 000 000
59	Murphy	Government of I. R. Iran	1:06-cv-00596	31/03/2006	Beirut	24/09/2010	31 865 570	61 302 671
60	Rimkus II	Government of I. R. Iran	1:08-cv-01615	19/09/2008	Saudi Arabia	16/11/2010	0	5 150 000
61	Valore	Government of I. R. Iran	1:03-cv-01959	16/09/2003	Beirut	31/03/2011	290 291 092	798 000 000
62	Valencia	Government of I. R. Iran	1:08-cv-00533	28/03/2008	Saudi Arabia	31/03/2011	15 500 000	15 965 000
63	Bayani	Government of I. R. Iran	1:04-cv-01712	06/10/2004	Iran	19/05/2011	66 331 500	400 000 000
64	Ben Haim	Government of I. R. Iran	1:08-cv-00520	20/03/2008	Gaza	19/05/2011	16 000 000	300 000 000
65	Beer II	Government of I. R. Iran	1:08-cv-01807	17/10/2008	Israel	19/05/2011	0	300 000 000
66	Arnold	Government of I. R. Iran	1:06-cv-00516	10/03/2006	Beirut	31/05/2011	19 023 602	20 000 000
67	Leibovitch	Government of I. R. Iran	1:08-cv-01939	04/03/2008	Israel	06/09/2011	32 000 000	35 000 000
68	Bland	Government of I. R. Iran	1:05-cv-02124	30/10/2005	Beirut	21/12/2011	227 805 908	1 233 458 232
69	Tarek Reed	Government of I. R. Iran	1:03-cv-02657	30/12/2003	Lebanon	28/02/2012	4 535 000	None

70	Anderson	Government of I. R. Iran	1:08-cv-00535	28/03/2012	Beirut	10/03/2012	7 500 000	25 800 000
71	O'Brien	Government of I. R. Iran	1:06-cv-00690	17/04/2006	Beirut	28/03/2012	10 050 000	34 572 000
72	Davis	Government of I. R. Iran	1:07-cv-01302	07/07/2003	Beirut	30/03/2012	486 918 005	1 674 997 973
73	Wultz	Government of I. R. Iran	1:08-cv-01460	22/08/2008	Israel	14/05/2012	32 068 634	300 000 000
74	Brown	Government of I. R. Iran	1:08-cv-00531	27/03/2008	Beirut	03/07/2012	183 281 294	630 487 651
75	Oveissi	Government of I. R. Iran	1:11-cv-00849	05/05/2011	France	25/07/2012	7 500 000	300 000 000
76	Fain	Government of I. R. Iran	1:10-cv-00628	22/04/2010	Beirut	31/07/2012	15 268 703	52 524 338
77	Taylor	Government of I. R. Iran	1:10-cv-00844	20/05/2010	Beirut	31/07/2012	148 000 000	509 120 000
78	Havlish	Government of I. R. Iran & Iran Airlines, Central Bank of Iran, National Iranian Gas Company, National Iranian Oil Corporation, National Iranian Petrochemical Company, National Iranian Tanker Corporation	1:03-cv-09848	11/12/2003	United States	02/10/2012	1 362 277 884	4 686 235 921
79	John Doe	Government of I. R. Iran	1:08-cv-00540	28/03/2008	Beirut	26/03/2013	8 411 899 095	300 000 000
80	Botvin	Government of I. R. Iran	1:05-cv-00220	31/01/2005	Israel	04/04/2013	1 704 457	None
81	Goldberg-Botvin	Government of I. R. Iran	1:12-cv-01292	03/08/2012	Israel	04/04/2013	10 000 000	30 890 000
82	Spencer	Government of I. R. Iran	1:12-cv-00042	10/01/2012	Beirut	14/01/2014	102 161 376	351 435 133
83	Mwila	Government of I. R. Iran	1:08-cv-01377	07/08/2008	Kenya & Tanzania	28/03/2014	233 757 712	185 994 928
84	Khaliq	Government of I. R. Iran	1:10-cv-00356	05/03/2010	Kenya & Tanzania	28/03/2014	49 761 544	None
85	Wamai	Government of I. R. Iran	1:08-cv-01349	05/08/2008	Kenya & Tanzania	25/07/2014	1 783 052 244	1 783 052 244
86	Amduso	Government of I. R. Iran	1:08-cv-01361	09/09/2008	Kenya & Tanzania	25/07/2014	877 939 215	877 939 215
87	Opati	Government of I. R. Iran	1:12-cv-01224	24/07/2012	Kenya & Tanzania	25/07/2014	1 581 716 936	1 581 716 936
88	Onosongo	Government of I. R. Iran	1:08-cv-01380	07/08/2008	Kenya & Tanzania	28/07/2014	99 553 289	99 553 289
89	Owen & Aliganga	Government of I. R. Iran	1:01-cv-02244	28/10/2001	Kenya & Tanzania	15/10/2014	283 809 867	338 491 262
90	Moradi	Government of I. R. Iran	1:13-cv-00599	30/04/2013	Iran	05/01/2015	10 168 000	10 168 000
91	Roth	Government of I. R. Iran	1:11-cv-01377	28/07/2011	Israel	27/01/2015	18 691 019	112 500 000
92	Flanagan	Government of I. R. Iran	1:10-cv-01643	28/09/2010	Yemen	02/04/2015	18 750 000	56 250 000
93	Ashton	Government of I. R. Iran	1:02-cv-06977	04/09/2002	United States	08/03/2016	1 718 000 000	5 841 880 000
94	Federal Insurance Co.	Government of I. R. Iran	1:03-cv-06978	10/09/2003	United States	10/03/2016	3 040 998 426	None
95	Worely	Government of I. R. Iran	1:12-cv-02069	28/12/2012	Beirut	31/03/2016	58 580 424	201 516 659
96	Kaplan	Government of I. R. Iran	1:10-cv-00483	23/03/2010	Israel	30/09/2016	38 161 966	131 277 165
97	Hoglan	Government of I. R. Iran	1:11-cv-07550	22/10/2013	United States	31/10/2016	3 214 215 035	None
98	Shmuel Braun	Government of I. R. Iran	1:15-cv-01136	15/07/2015	Israel	09/01/2017	28 000 000	150 000 000
99	Ashton consolidated with Burlingame Brietweiser Baur	Government of I. R. Iran	1:02-cv-06977	04/09/2002	United States	2015, 2018, 2019	7 690 883 507 + 1 058 250 000 + 66 385 507 + 654 970 000 + 1 414 250 000 + 165 250 000 + 238 000 000 + 9 543 750 000 + 4 250 000	5 841 880 000 (Ashton)
100	O'Neil	Government of I. R. Iran	1:04-cv-01076	10/02/2004	United States	2019	46 500 000	None
101	Continental Casualty	Government of I. R. Iran	1:04-cv-05970	01/09/2004	United States	2018	527 598 884	None
102	Cohen	Government of I. R. Iran	1:12-cv-01496	10/09/2012	Israel	2017	69 650 000	139 300 000
103	Relvas	Government of I. R. Iran	1:14-cv-01752	20/10/2014	Lebanon	2018	212 222 647	730 045 905
104	Fritz	Government of I. R. Iran	1:15-cv-00456	30/03/2015	Iraq	2018	193 044 753	55 903 936
105	Fraenkel	Government of I. R. Iran	1:15-cv-01080	09/07/2015	Israel	2017	5 100 000	50 000 000
106	Hirshfeld	Government of I. R. Iran	1:15-cv-01082	10/07/2015	Israel	2018	191 950 000	None
107	Braun	Government of I. R. Iran	1:15-cv-01136 & 1:15-cv-01530	15/07/2015	Israel	2017	28 000 000	150 000 000
108	Burnett	Government of I. R. Iran	1:15-cv-09903	18/12/2015	United States	2017	9 554 000 000 + 1 697 193 015 + 1 707 000 000 + 1 586 250 000	None
109	Mati Gill	Government of I. R. Iran	1:15-cv-02272	31/12/2015	Israel	2017	7 500 000	22 500 000
110	Rezaian	Government of I. R. Iran	1:16-cv-01960	10/03/2016	Iran	2019	29 653 067	150 000 000
111	Hekmati	Government of I. R. Iran	1:16-cv-00875	09/05/2016	Iran	2017	31 748 179	31 748 179
112	Barry	Government of I. R. Iran	1:16-cv-01625	10/08/2016	Lebanon	2019	51 000 000	None

113	Goldstein	Government of I. R. Iran	1:16-cv-02507	23/12/2016	Israel	2019	13 062 500	None
114	Spaulding	Government of I. R. Iran	5:16-cv-01748	23/12/2016	Lebanon	2018	49 459 405	None
115	Parhamovich	Government of I. R. Iran	1:17-cv-00061	17/01/2017	Iraq	2019	59 250 000	None
116	Allan	Government of I. R. Iran	1:17-cv-00338	24/02/2017	Greece	2019	353 000 000	None
117	Akinz	Government of I. R. Iran	1:17-cv-00657	17/04/2017	Saudi Arabia	2018	104 700 000	None
118	Schooley	Government of I. R. Iran	1:17-cv-01376	13/07/2017	Saudi Arabia	2019	892 750 000	None
119	Weinstock	Government of I. R. Iran	1:17-cv-23272	29/08/2017	Israel	2019	26 291 000	None
120	Steinberg	Government of I. R. Iran	1:17-cv-01910	18/09/2017	Israel	2019	15 934 010	150 000 000
121	Salzman	Government of I. R. Iran	1:17-cv-02475	16/11/2017	Israel	2019	17 500 000	None
122	Abedini	Government of I. R. Iran	1:18-cv-00588	16/03/2018	Iran	2019	23 580 141	47 169 176
123	Bakahityar	Government of I. R. Iran	1:18-cv-05339	13/06/2018	United States	2019	1 095 900 000	None
124	Morris	Government of I. R. Iran	1:18-cv-05321	14/06/2018	United States	2019	29 500 000	None
125	Schlissel	Government of I. R. Iran	1:18-cv-05331	14/06/2018	United States	2019	891 888 723	None
126	Agyeman	Government of I. R. Iran	1:18-cv-05320	15/06/2018	United States		8 410 658	None
127	Ades	Government of I. R. Iran	1:18-cv-07306	13/08/2018	United States	2019	17 000 000 + 591 750 000	None
128	Betru	Government of I. R. Iran	1:18-cv-08297	12/09/2018	United States	2019	89 750 000	None
129	Rowenhorst	Government of I. R. Iran	1:18-cv-12387	15/11/2018	United States	2019	50 750 000	None
130	Nolan	Government of I. R. Iran	1:18-cv-11340	05/12/2018	United States	2019	21 000 000	None
131	Dickey	Government of I. R. Iran	1:18-cv-11417	06/12/2018	United States	2019	427 333 345	None
132	Derubbio	Government of I. R. Iran	1:18-cv-05306	06/12/2018	United States	2019	1 319 500 000	None
133	Moody	Government of I. R. Iran	1:18-cv-11876	17/12/2018	United States	2019	17 000 000	None
134	Abel	Government of I. R. Iran	1:18-cv-11837	17/12/2018	United States	2019	46 750 000	None
135	Kim	Government of I. R. Iran	1:18-cv-11870	17/12/2018	United States	2019	29 750 000	None
136	Rivelli	Government of I. R. Iran	1:18-cv-11878	17/12/2018	United States	2019	516 250 000 + 8 500 000	None
137	Aronow	Government of I. R. Iran	1:18-cv-12001	19/12/2018	United States	2019	46 750 000	None
138	Prior	Government of I. R. Iran	1:19-cv-00044	02/01/2019	United States	2019	25 500 000	None
						Total	**72 808 497 465**	**38 714 325 813**
							111 522 823 278	

Attachment 2

Actions filed with U.S. courts to enforce judgments against assets of I.R. Iran & Iranian State entities as of 31 December 2019

Actions filed with US Courts to Enforce Judgments against Assets of I. R. Iran & Iranian State Entities

As of 31 December 2019

No.	Plaintiff	Defendant	Case No.	Date of Action	US Court	Property	Latest Status
1	Rafii, Rubin	Ministry of Defence and Support for Armed Forces of I. R. Iran (MODSAF)	3:98-cv-01165	25/06/1998	D.C. California	Arbitral award money of $9,462,750	29.4.2016: Court ordered the turnover of $9,462,750 to plaintiffs
2	Heiser	Government of I. R. Iran, Bank Mellat, Bank Melli, Bank Saderat, Iran Air, Iran Marine Industrial Company, Khazar Shiping, National Iranian Oil Company, Telecommunication Infrastructure Company ("TTC")	1:00-cv-02329	29/09/2000	D.C. Columbia	Funds in the amount of $613,587, $59,031.92 & $249,365	10.8.2011: Court ordered turnover of $613,587 belonging to Telecommunications Infrastructure Company to Heiser. 9.6.2016: 9.6.2016: Court ordered turnover of $59,031.92 belonging to Iranian Marine & Industrial, Sediran Drilling Co., Iran Air, and Bank Melli PLC UK plus $249,365 funds of Iranian Navy to the plaintiffs. 25.7.2019: OFAC Proctive order granted for disclosure of Iranian assets to Heiser plaintiffs appearntly in total value of $100,000
3	Stern	Government of I. R. Iran	1:00-cv-02602	27/10/2000	D.C. Columbia	IR domain (internet country code)	7.7. 2014: Attachment of IR domain (internet country code). 10.11.2014: Attachment quashed 20.7.2015: Appeal dismissed. 31.8.2016: Request for eb banc filed with Court of Appeals
4	Weinstein	Government of I. R. Iran	1:00-cv-02601	27/10/2000	D.C. Columbia	IR domain (internet country code)	7.7. 2014: Attachment of IR domain (internet country code). 10.11.2014: Attachment quashed. 20.7.2015: Appeal dismissed. 31.8.2016: Request for eb banc filed with Court of Appeals
5	Peterson & Bonk	Clearstream, HSBC Bank, Occidental International Corp., Occidental Petroleum Corp., Export-Import Bank of India, State Bank of India, Siemens Corp., World Bank, Asian Development Bank, Mitsubisshi, Bank of Japon, Export-Import Bank of Korea, International Finance Corp., Bank of Tokyo, Caterpillar Inc., Deutsche Bank, Telecommunications Satellite Organization	1:01-cv-02094	03/10/2001	D.C. Columbia	Electronic Funds Tranfers	12.1.2015: Writ of certiorari against quashing attachment of Iranian EFT funds denied . 4.6.2019: judgment revived.
6	Bakhtiar	Government of I. R. Iran	1:02-cv-00092	22/01/2002	D.C. Columbia	None	Writ of Execution served on USB Bank & Bank of New York. 30.7.2019: judgment revived.
7	Hegna	Government of I. R. Iran	5:02-mc-00042	03/12/2002	D.C. Texas	None	12.10.2014: Judgment on quashing writ of attachment of Iranian property was affirmed by Court of Appeals
8	Bennet	Government of I. R. Iran	4:12-mc-00633	02/07/2003	D.C. Texas	None	17.9.2012: Judgment registered
9	Davis	Government of I. R. Iran	1:07-cv-01302	07/07/2003	D.C. Columbia	None	17.1.2013: Granting execution. 4.12.2014: Motion to require information from OFAC and motion for protective order. 26.10.2015: Sealed motion for attachment. 26.11.2019: Protective Order granted for disclosure of Iranian assets by OFAC.
10	Stern	Government of I. R. Iran	8:03-mc-00371	25/07/2003	D.C. Columbia	None	25.7.2003: judgment registered

11	Havlish	Government of I. R. Iran & Iran Airlines, Central Bank of the Islamic Republic of Iran, National Iranian Gas Company, National Iranian Oil Corporation, National Iranian Petrochemical Company, National Iranian Tanker Corporation, Mellon Bank of New York, JP Morgan Bank	1:03-cv-09848	11/12/2003	D.C. Columbia	None	13.5.2015: Agreed protective order concenring garnishees
12	Rubin	Government of I. R. Iran	1:03-cv-09370	29/12/2003	D.C. Illinois	Perspolis tablets and other Iranian historical objects	29.12.2003: Attachment of Persepolis tablets and other Iranian historical objects. 21.7.2016: Court's quashing the attachment. 20.10.2016: Write of certiorari filed. 21.2.2018: Rubin case dismissed and attachment quashed.
13	Goldberg-Botvin	Government of I. R. Iran	1:05-cv-00220	31/01/2005	D.C. Columbia	None	3.7.2012: Execution authorized. 28.2.2018: Protective Order for disclosure of Iranian assets by OFAC issued.
14	Rubin	Government of I. R. Iran	2:05-mc-70974	14/03/2005	D.C. Michigan	None	14.3.2005: Judgment registered
15	Levin	Government of I. R. Iran, Bank of New York Mellon, Morgan Chase, Societe Generale & Citibank New York	1:09-cv-05900	30/12/2005	D.C. New York	Funds in the amount of at least $4000,000 and $4,191,492.25	28.1.2011: Court ordered for turnover of phase 1 blocked assets of Iranian banks and NIOC to Accosta, and Greenbaum. 23.9 &10.10.2013: Court ordered for turnover of over $4000,000 of phase 2 Iranian blocked assets to Levin, Acosta, Greenbaum & Heiser. 31.10.2013: Court order in phase 3 for turnover of $4,191,492.25 of Master Card's debt to Bank Melli & Bank Saderat to Levin, Greenbaum & Heiser.
16	Levin	Government of I. R. Iran	1:11-mc-00283	30/12/2005	D.C. New York	Not known	28.8.2012: Service of writ of attachment on Mellon Bank, Citibank & JP Morgan Bank
17	Murphy	Government of I. R. Iran	1:11-mc-00423	31/03/2006	D.C. New York	None	14.4.2014: Writ of execution issued
18	Leibovitch	Government of I. R. Iran, BNP Paribas, Bank of Tokyo, State Bank of India	1:08-cv-01939	04/03/2008	D.C. Illinois	None	19.5.2016: Order quashing motion to compel discovery against banks. 10.9.2018: Case subpoena withrawn, case dismissed
19	Ben Haim	Government of I. R. Iran	1:08-cv-00520	20/03/2008	D.C. Columbia	IR domain (internet country code)	7.7. 2014: Attachment of IR domain (internet country code); 10.11.2014: Attachment quashed. 20.7.2015: Appeal dismissed;14.1.2016: OFAC agreed to provide information on Iranian blocked assets in the US under a Protective Order. 31.8.2016: Request for eb banc rehearing filed with Court of Appeals
20	Boddof	Government of I. R. Iran	1:08-cv-00547	28/03/2008	D.C. Columbia	None	12.6.2012: Service of the new judgment
21	Peterson	Government of I. R. Iran	4:08-mc-00016	21/04/2008	D.C. Oklahoma	None	21.4.2008: Judgment registered
22	Ben-Rafael	Government of I. R. Iran	1:08-cv-00716	25/04/2008	D.C. Columbia	None	2.7.2012: Execution authorized, judgment in 1:06-cv-00721 reinstated.
23	Peterson	Government of I. R. Iran	2:08-mc-00098	28/07/2008	D.C. California	None	28.7.2008: Judgment registered
24	Wamai	Government of I. R. Iran	1:08-cv-01349	05/08/2008	D.C. Columbia	None	2.5.2016: Authorization to OFAC to disclose property information to plaintiffs

25	Heiser	Government of I. R. Iran	2:08-mc-00109	27/08/2008	D.C. California	None	27.8.2008: Judgment registered
26	Heiser	Government of I. R. Iran	1:08-mc-00212	27/08/2008	D.C. Maryland	None	27.8.2008: Judgment registered
27	Heiser	Government of I. R. Iran	3:08-mc-00491	11/09/2008	D.C. California	None	26.4.2012: Judgment registered. 26.4.2012: Order referring Heiser writ of execution to case no. 3:98-cv-01165 (Rafii/Rubin v. MODSAF/Cubic) for execution against ICC arbitral award. 11.5.2012: Voluntary withdrawal of motion for attachment
28	Heiser	Government of I. R. Iran	3:08-mc-00323	17/09/2008	D.C. Connecticut	None	17.9.2008: Judgment registered
29	Peterson	Government of I. R. Iran	0:08-mc-00062	13/11/2008	D.C. Minnesota	None	14.11.2008: Judgment registered
30	Peterson	Government of I. R. Iran	3:08-mc-09256	13/11/2008	D.C. Oregon	None	13.11.2008: Judgment regsitered
31	Acosta	Government of I. R. Iran	2:09-mc-00101	17/11/2009	D.C. California	None	17.11.2009: Judgment registered
32	Greenbaum	Government of I. R. Iran	2:09-mc-00104	19/11/2009	D.C. California	None	19.11.2009: Judgment registered
33	Heiser	Government of I. R. Iran, Bank Melli	4:09-mc-00559	19/11/2009	D.C. Texas	None	19.11.2009: Notice of lis pendens
34	Heiser	Government of I. R. Iran, Bank Melli	8:09-mc-00373	19/11/2009	D.C. Maryland	None	19.11.2009: Notice of lis pendens
35	Heiser	Government of I. R. Iran, Bank Melli	3:09-mc-00941	19/11/2009	D.C. California	None	19.11.2009: Notice of lis pendens
36	Heiser	Government of I. R. Iran, Bank Melli	2:09-mc-00105	19/11/2009	D.C. California	None	19.11.2009: Notice of lis pendens
37	Khaliq	Government of I. R. Iran,	1:11-mc-00036	05/03/2010	D.C. New York	None	15.2.2011: Notice of lis pendens
38	Peterson, Greenbaum, Heiser, Acosta, Rubin, Levin, Valore, Bonk, Silvia, Brown, Bland & Beer	Governement of I. R. Iran & Central Bank of Iran	1:10-cv-04518	06/08/2010	D.C. New York	Funds in the amount of $1,895600,513 plus interest	6.6.2016: Court authorized payment of $1,895,600,513 plus interest (amount unknown) to plaintiffs
39	Heiser	Government of I. R. Iran	1:10-mc-00005	07/12/2010	D.C. New York	None	29.5.2013: Writ of execution issued. As of April 2018, $ 91,000,000 recovered out of Iranian asset, according to plaintiffs.
40	Heiser	Government of I. R. Iran	1:11-cv-00137	18/01/2011	D.C. Maryland	Unknown	Writ of garnishment of Iranian blocked assets held by Bank of America and Wells Fargo Bank. 27.11.2012: Case closed until further notice. 7.11.2013: Docs & papers filed under seal
41	Heiser	Government of I. R. Iran	1:11-cv-00998	14/02/2011	D.C. New York	Unknown.	14.2.2011: Petition for turnover of the funds by Mellon Bank; 29.11.2011: Stayed pending outcome of Levin (1:09-cv-5900). 7.3.2018: Case voluntarily dismissed.
42	Owen, Aliganga	Government of I. R. Iran	1:11-mc-00037	15/02/2011	D.C. New York	None	15.2.2011: Notice of lis pendens
43	Bennet	Government of I. R. Iran	1:11-mc-00035	15/02/2011	D.C. New York	None	31.5.2012: Writ of execution issued
44	Heiser, Campbell	Baroda Bank, New York Branch	1:11-cv-01602	08/03/2011	D.C. New York	Funds in the amount of $ 2180, $11160, $12647.68, $13000, $13020, $ 19000, $49000, Appx. $9000	15.2.2013: Court ordered turnover to plaintiffs of the folwoing funds: Bank Saderat: $ 2180 Bank Saderat & Behran Oil Company: $11160 Export Development Bank of Iran (EDBI): $12647.68 & $13000 & $13020 Bank Melli: $ 19000 Sebia Bank Melli: $49000 17.7.2013: Appx. $9000 balance of the blocked funds paid to Heiser.

45	Heiser, Mitsubishi Bank	Government of I. R. Iran	1:11-cv-01601	08/03/2011	D.C. New York	Funds in the amount of $92058.08, $4,740.00, $62216.80, $100,365.63 $98,127.36 & $2,181.88	13.2.2013: Judgment for turnover to plaintiffs the following funds: Bank Sepah International PLC: $92058.08; Azores Shipping Company LL FZE and Iranohind Shipping Company: $4,740.00 Islamic Republic of Iran
46	Heiser	Government of I. R. Iran	1:11-cv-01609	08/03/2011	D.C. New York	Funds in the amount of $123,202.32	4.5.2012: Court order for turnover of about $123,202.32 of Iranian funds to Heiser
47	Valore	Government of I. R. Iran	1:11-mc-00217	07/06/2011	D.C. New York	None	5.7.2011: Judgment registered.
48	Heiser	Government of I. R. Iran	1:11-mc-00295	24/06/2011	D.C. New York	None	1.9.2011: Execution authorized.
49	Heiser	Government of I. R. Iran	3:11-mc-00116	25/07/2011	D.C. Carolina	None	25.7.2011: Judgment registered.
50	Greenbaum	Government of I. R. Iran	3:11-mc-80283	09/11/2011	D.C. San Francisco	Funds (see no. 54)	19.12.2011: Case is related to Bennett for garnishment of Visa debts to Bank Melli.
51	Rimkus	Government of I. R. Iran	1:11-mc-00413	21/11/2011	D.C. New York	None	21.11.2011: Judgment registered
52	Rimkus	Government of I. R. Iran	1:11-mc-00412	21/11/2011	D.C. New York	None	21.11.2011: Judgment registered
53	Heiser	Government of I. R. Iran	1:11-cv-08446	28/11/2011	D.C. New York	None	1.6. 2012: Action stayed until San Francisco court's decision in Bennett
54	Bennet, Greenbaum, Acosta, Heiser	Government of I. R. Iran	3:11-cv-05807	02/12/2011	D.C. California	Funds in the amount of $17.6 milions	22.2.2016: Court of Appeals affirms turnover of $17.6 milions of Visa's debts to Bank Melli to plaintiffs. 26.12.2019: Writ of certirari by Bank Melli against the decision of Court of Appeals as to turn over of funds to plaintiffs
55	Bennet	Government of I. R. Iran	0:12-mc-00004	20/01/2012	D.C. Minnesota	None	24.1.2012: Judgment registered
56	Rafii	Government of I. R. Iran	3:12-mc-00093	24/01/2012	D.C. California	Arbitral award money of $9,462,750 (see no. 1)	29.4.2016: Arbitral award money confirmed in favor of MODSAF was turned over to plaintiffs (See 3:98-cv-01165)
57	Heiser	Government of I. R. Iran	3:12-mc-00003	02/02/2012	D.C. Wisconsin	None	2.2.2012: Judgment registered. 24.4.2012: Execution and attachment authorized
58	Boddof	Government of I. R. Iran	1:12-mc-00154	10/05/2012	D.C. New York	None	10.5.2012: Judgment registered
59	Rubin	Government of I. R. Iran	1:12-mc-00153	10/05/2012	D.C. New York	None	10.5.2012: Judgment registered. 2.9.2012: Attachment of assets of Mr. Ahmadinejad at hotel Warwick denied. 11.3.2016: Execution authorized
60	Stern	Government of I. R. Iran	1:12-mc-00151	10/05/2012	D.C. Columbia	None	10.5.2012: Judgment registered
61	Ben Haim	Government of I. R. Iran	1:12-mc-00152	10/05/2012	D.C. New York	None	10.5.2012: Judgment registered
62	Stethem	Government of I. R. Iran	1:12-mc-00203	12/06/2012	D.C. New York	None	12.6.2012: Judgment registered
63	Weinstein, Heiser	Government of I. R. Iran & HSBC Bank	2:12-cv-03445	12/07/2012	D.C. Columbia	Sale proceeds of $333,776 and $1,021,736	20.12.2012: Heiser & Weinstein received $333,776 and $1,021,736 out of sale proceeds of Bank Melli's building. 17.3.2015: China Construction Bank was served with confidential discovery
64	Owen, Aliganga	Government of I. R. Iran	1:12-mc-00243	20/07/2012	D.C. New York	None	20.7. 2012: Notice of lis pendens
65	Heiser	Government of I. R. Iran	2:12-mc-00391	27/09/2012	D.C. California	None	1.10.2012: Judgment registered
66	Heiser	Government of I. R. Iran	2:12-mc-00392	27/09/2012	D.C. California	None	1.10.2012: Judgment registered
67	Bland	Government of I. R. Iran	1:12-mc-00373	13/11/2012	D.C. New York	None	13.11.2012: Judgment registered. 21.10.2013: Writ of execution issued
68	Bakhtiar	Government of I. R. Iran	1:12-mc-00403	14/12/2012	D.C. Columbia	None	14.12.2012: Judgment registered. 9.1.2013: Writ of execution issued
69	Holland	Government of I. R. Iran	1:13-mc-00149	26/01/2013	D.C. New York	None	26.4.2013: Judgment registered
70	Davis	Government of I. R. Iran & J.P Morgan Bank	1:13-mc-00046	14/02/2013	D.C. New York	None	10.4.2014: Writ of execution issued. 1.7.2014: Writ served on JP Morgan

71	Brown	Government of I. R. Iran & J.P Morgan Bank	1:13-mc-00113	31/03/2013	D.C. New York	None	28.3.2013: Judgment registered. 10.4.2014: Writ of execution issued. 1.7.2014: Writ of execution served on JP Morgan
72	Havlish	Islamic Republic of Iran & Royal Dutch Shell Co.	1:13-cv-07074	10/04/2013	D.C. New York	Funds in the amount of $ 2.3	2.10.2014: Request for attachment of $ 2.3 billions of Royal Dutch Shell Co., dues to National Iranian Oil Company was dismissed. 4.8.2015: Discovery filed against Wells Fargo Bank
73	Brewer	Government of I. R. Iran	1:13-mc-00148	26/04/2013	D.C. New York	None	26.4.2013: Judgment registered
74	Blais	Government of I. R. Iran	1:13-mc-00145	26/04/2013	D.C. New York	None	26.4.2013: Judgment registered
75	Valencia	Government of I. R. Iran	1:13-mc-00150	26/04/2013	D.C. New York	None	26.4.2013: Judgment registered
76	Goldberg-Botvin	Government of I. R. Iran	1:13-mc-00322	13/09/2013	D.C. New York	None	12.9.2013: Judgment registered
77	Goldberg-Botvin	Government of I. R. Iran	1:13-mc-00323	17/09/2013	D.C. New York	None	12.9.2013: Judgment registered
78	Wultz	Government of I. R. Iran	1:13-mc-00055	17/09/2013	D.C. New York	None	15.2.2013: Judgment registered. 13.5.2013: Service on Clearstream & Central Bank of Iran
79	Peterson, Greenbaum, Heiser, Acosta, Rubin, Levin, Valore, Bonk, Silvia, Brown, Bland & Beer	Government of I. R. of Iran, Central Bank of Iran, JP Morgan Bank, Clearstream, UBAE Bank	1:13-cv-09195	30/12/2013	D.C. New York	Funds in the amount $1.683840765.44	19.2.2015: Request for attachment of $1,683,840,765.44 of XS bonds in Europe was dismissed. 6.3.2015: Appeal filed. The case is pending before the Court of Appeals for the application of Section 8772 as amended by Congress in December 2019
80	Goldberg-Botvin	Government of I. R. Iran & J.P Morgan Bank, Mellon Bank, Wells Fargo Bank	1:14-cv-03002	25/04/2014	D.C. Columbia	Unknown.	8.7.2014: OFAC information on Iranian assets filed under seal. 16&17.2.2016: Citation against garnishee banks to discover Iranian assets. 3.7.2019: Citation against the Iranian Government for discovery of assets.
81	Goldberg-Botvin	Government of I. R. Iran	1:14-cv-03010	25/04/2014	D.C. Columbia	Unknown	8.7.2014: OFAC information on Iranian assets filed under seal. 16&17.2.2016: Citation against garnishee banks to discover Iranian assets. 3.7.2019: Citation against the Iranian Government for discovery of assets.
82	Levin	Government of I. R. Iran & J.P Morgan Bank	1:14-mc-00041	18/06/2014	D.C. New York	None	13.3.2014, 18.6.2014, 3.9.2014: Writs of execution issued
83	Relvas	Government of I. R. Iran	1:14-mc-00359	20/11/2014	D.C. New York	None	29.10.2014: Notice of pending action
84	Levin	Government of I. R. Iran	1:14-mc-01389	28/11/2014	S. New York	None	18.6.2014: writ of execution & attachment issued. 12.11.2014: Service activity on JP Morgan Bank. 28.11.2014: Registration of judgment in 1:14-mc-01389.
85	Oveissi	Government of I. R. Iran	3:15-mc-00005	23/02/2015	Alaska	None	23.2.2015: Judgment registered
86	Oveissi	Government of I. R. Iran	2:15-mc-00050	23/02/2015	D.C. California	None	23.2.2015: Judgment registered
87	Bakhtiar	Government of I. R. Iran	3:15-mc-00099	08/06/2015	D.C. Columbia	None	8.6.2015: Judgment registered
88	Havlish	Government of I. R. Iran & National Iranian Gas Company, National Iranian Oil Corporation, National Iranian Petrochemical Company, National Iranian Tanker Corporation	1:15-cv-04055	05/07/2015	D.C. Illinois	Unknown	8.4.2015: Discovery against Wells Fargo Bank to discover Iranian assets
89	Bodoff	Government of I. R. Iran	1:15-mc-00234	31/07/2015	Columbia	None	Bodoff v. Iran (1:02-cv-01991) is a member case. 12.6.2012: Service of the new judgment. 31.7.2015: Judgment registration.

89	Bodoff	Government of I. R. Iran	1:15-mc-00234	31/07/2015	Columbia	None	Bodoff v. Iran (1:02-cv-01991) is a member case. 12.6.2012: Service of the new judgment. 31.7.2015: Judgment registration.
90	Ben Haim	Government of I. R. Iran	1:16-mc-00094	08/03/2016	D.C. New York	None	8.3.2016: Judgment registered
91	Leibovitch	Government of I. R. Iran	1:16-mc-00097	09/03/2016	D.C. New York	None	9.3.2016: Judgment registered. 9.3.2016: Writ of execution issued
92	Havlish	Government of I. R. of Iran, Central Bank of Iran, JP Morgan Bank, Clearstream, UBAE Bank	1:16-cv-08075	14/10/2016	D.C. New York	Funds in the amount $1.683840765.44 (see no. 79)	24.10.2016: Plaintiffs' request from the court to accept the relatedness of the case to Peterson (1:13-cv-09195). 31.1.2019: Litigation stayed
93	Wultz	Government of I. R. Iran	3:17-mc-00009	31/03/2017	Virgin Islands	None	31.3.2017: Registration of judgment.
94	Bayani	Government of I. R. Iran	3:17-mc-00154	04/04/2017	Puerto Rico	None	4.4.2017: Registration of judgment.
95	Wultz	Government of I. R. Iran	3:17-mc-00153	04/04/2017	Puerto Rico	None	4.4.2017: Registration of judgment.
96	Heiser	Government of I. R. Iran	2:17-mc-00114	14/09/2017	Washington (Seattle)	None	14.9.2017: judgment registered.
97	Gill	Government of I. R. Iran	1:17-mc-00500	13/12/2017	New York	None	13.12.2017: Registration of judgment.
98	Braun	Government of I. R. Iran	1:18-cv-01681	07/03/2018	Illinois	Unknown	7.3.2018: Registration of judgment. 23.3.2018: Citation to discover assets against Boeing Company.
99	Rubin	Government of I. R. Iran	1:18-cv-01689	07/03/2018	Illinois	Unknown	7.3.2018: Registration of judgment. 23.3.2018: Citation to discover assets of Iran against Boeing Co.
100	Weinstein	Government of I. R. Iran	1:18-cv-01691	07/03/2018	Illinois	Unknown	7.3.2018: Registration of judgment. 23.3.2018: Citation to discover assets of Iran against Boeing Co.
101	Bodoff	Government of I. R. Iran	1:18-cv-01686	03/07/2018	Illinois	Unknown	3.7.2018: Registration of judgment. 23.3.2018: Citation to discover assets against Boeing Company.
102	Khaliq	Government of I. R. Iran	1:19-mc-00289	12/06/2019	S. New York	None	12.6.2019: Registration of judgment.
103	Mwila	Government of I. R. Iran	1:19-mc-00290	12/06/2019	S. New York	None	12.6.2019: Registration of judgment.
104	Owen	Government of I. R. Iran	1:19-mc-00288	12/06/2019	S. New York	None	12.6.2019: Registration of judgment.
105	Leibovitch	Government of I. R. Iran	1:19-mc-01590 1:19-mc-01586	18/06/2019 10/06/2019	New York	None	18.6.2019: Registration in New York 10.6.2019: Registration in Texas
106	Braun	Government of I. R. Iran	1:19-mc-01618	21/06/2019	S. New York	None	21.6.2019: Registration of judgment.

Attachment 3

Actions filed in other jurisdictions for recognition & enforcement of U.S. judgments against assets of Iran & Iranian State entities as of 31 December 2019

Actions filed in other Jurisdictions for Recognition & Enforcement of US Judgments against Assets of I. R. Iran & Iranian State Entities
As of 31 December 2019

No.	Plaintiff	Defendant	Case No.	Date of Action	Place of Enfocement	Property	Latest Status
1	Jacobson & Steen	Government of I. R. Iran	cv-10-405814	28/06/2010	D.C. Ontario, Canada	See item 3 below	Plaintiffs agreed with Tracy et al to stay their litigation and receive portions of the assets
2	Tarek Reed	Government of I. R. Iran	HFX407310	26/09/2012	D.C. Ontario, Canada	See item 3 below	The plaintiffs agreed with Tracy et al to stay their litigation and receive portions of assets
3	Tracy , Cicippio, Holland, Marthaler, Higgins and Bennett	Government of I. R. Iran	cv-1410403	23/01/2014	D.C. Ontario, Canada	Two bank accounts and two immovable properties in Toronto and Ottawa	Two Iranian Embassy bank accounts in the amounts of $1,651942 & $333,4445.23 and the sale proceeds of two Iranian immoveable properties in Ottawa and Toronto in the value of $26 & $1.8 million respectively were distributed amongst the planitiffs.
4	Havlish	Government of I. R. Iran	S-16827.2	09/08/2016	Britich Columbia	None	Havlish has regiseterd the judgement recognosed in B. Columbia in Ontario. 27.7.2018 judgement recognised in Ontarion.
5	Havlish	Government of I. R. Iran & Iran Airlines, Central Bank of Iran, National Iranian Gas Company, National Iranian Oil Corporation, National Iranian Petrochemical Company, National Iranian Tanker Corporation,	177266	21/01/2016	Luxembourg Court	Funds in the amount of $1.683840765.44	21.1.2016:Attachment of $1,.683,840,765.44 of XS bonds funds belonging to Central Bank of Iran. 27.3.2019: Havlish petition for recognition of the US judgement dismissed. Appeal pending. Other parallel proceedings relating to quashing the attachment of Bank Markazi's funds held with Clearstream & UBAE are suspended until the outcome of appeal in Recognition Action.
6	Havlish	Government of Iran, Central Bank of Iran, National Iranian Gas Company, National Iranian Oil Corporation, National Iranian Petrochemical Company, National Iranian Tanker Corporation,	5709/2018	27/09/2018	Court of Appeals in Rome	None	This Case is now pending, exchange of briefs completed. Hearing is set for 27.2.2020.
7	Wultz & Bayani	Government of Iran,	TAL-2018-00702	09/06/2017	District Court of Luxembourg	None	This Case is now suspended until the outcome of Appeal in Havlish (see item above)
8	Duker & Eisenfeld Flatow	Government of I. R. Iran	TAL-2017-00564 TAL-2017-00563	22/03/2017	District Court of Luxembourg	Funds in the amount of $1.683840765.44 belonging to Bank Markazi	Attachment of $1.683840765.44 of XS bonds funds belonging to Central Bank of Iran on 22/3/2017. On 20 December 2018 the attachment was found unlawful which was upheld by the Court of Appeal on 10 July 2019. The validation proceeding of attachment was dismissed on 22 May 2019. The Plaintiffs'appeal is still pending.
9	Flatow	Government of I. R. Iran	RG 18/06639	18/05/2018	District Court of Paris	None	An ex-parte exequatur issued on 9 January 2019. Iran's appeal is now pending before the Court of Appeal in Paris
10	Flatow	Government of I. R. Iran	V-2091219-251132	20/12/2019	District Court of Luxembourg	None	Request for recognition and enforcement of the French exequatur (see No. 9) under article 53 of EU Regulation 1215/2012 has filed on 20 December 2019. The case is now pending before the Court.

Attachment 4

Claims pending before the U.S. courts against Iran & Iranian State entities as of 31 December 2019

Claims Pending before U.S. courts against Iran & Iranian State Entities
As of 31 January 2019

No.	Plaintiff	Defendant	Case No.	Date of Action	U.S. court	Location of Alleged Act	Relief Sought	
							Compensation (US$)	Punitive Damage (US$)
1	Boulos	Government of I. R. Iran	1:01-cv-02684	28/12/2001	D.C. Columbia	Beirut	200 000 000	125 000 000
2	Salvo	Government of I. R. Iran	1:03-cv-05071	08/07/2003	D.C. New York	United States	90,000,000	300,000,000
3	Barrera	Government of I. R. Iran	1:03-cv-07036	10/09/2003	D.C. Columbia	United States	290,000,000	300,000,000
4	In Re September 11	Government of I. R. Iran & Iran Airlines, CBI, NIGC,	1:03-md-01570	10/12/2003	D.C. New York	United States	NA	NA
5	New York Marine and General Insurance Company	Government of I. R. Iran	1:04-cv-06105	06/08/2004	D.C. New York	United States	NA	NA
6	Baxter	Government of I. R. Iran	1:11-cv-02133	30/11/2011	D.C. Columbia	Israel	738,000,000	1,000,000,000
7	Bluth	Government of I. R. Iran	1:12-cv-00250	07/11/2012	D.C. Columbia	Gaza	90,000,000	500,000,000
8	Strange	Government of I. R. Iran and Afghanistan, the Taliban and	1:14-cv-00435	18/03/2014	D.C. Columbia	Afghanistan	200,000,000	NA
9	Sheikh	Government of I. R. Iran	1:14-cv-02090	11/12/2014	D.C. Columbia	Kenya and	300,000,000	NA
10	Kinyua	Government of I. R. Iran	1:14-cv-02118	15/12/2014	D.C. Columbia	Kenya and Tanzania	375,000,000	
11	Ndeda Chogo	Government of I. R. Iran	1:15-cv-00951	19/06/2015	D.C. Columbia	Kenya & Tanzania	1,000,000,000	NA
12	Steven Bova	Government of I. R. Iran	1:15-cv-01074	08/07/2015	D.C. Columbia	Beirut	1,000,000,000	2,000,000,000
13	Saleh Alshaar	Government of I. R. Iran	1:15-cv-23438	11/09/2015	D.C. Columbia	Iraq	5,000,000	5,000,000
14	Soto	Government of I. R. Iran	1:15-cv-08410	24/09/2015	D.C. Columbia	Iraq	NA	NA
15	Lelchook	Government of I. R. Iran, Bank Markazi, Bank Saderat,	1:15-cv-13715	02/11/2015	D.C. Massachusetts	Israel	NA	NA
16	Maalouf	Government of I. R. Iran	1:16-cv-00280	17/02/2016	D.C. Columbia	Beirut	17,930,824	NA
17	Burks	Government of I. R. Iran	1:16-cv-01102	13/06/2016	D.C. Columbia	Iraq	NA	NA
18	Hamen	Government of I. R. Iran	1:16-cv-01394	01/07/2016	D.C. Columbia	Yemen	133,063,019	600,350,000
19	Katana	Government of I. R. Iran	1:19-cv-02068	11/07/2019	D.C. Columbia	Kenya and Tanzania	100,000,000	
20	Force	Government of I. R. Iran	1:16-cv-01468	15/07/2016	D.C. Columbia	Israel	NA	NA
21	Salazar	Government of I. R. Iran	1:16-cv-01507	22/07/2016	D.C. Columbia	Beirut	10,000,000	NA
22	Bathiard	Government of I. R. Iran	1:16-cv-01549	01/08/2016	D.C. Columbia	Beirut	47,824,636	750,000,000
23	Barry	Government of I. R. Iran	1:16-cv-01625	10/08/2016	D.C. Columbia	Beirut	1,500,000,000	None requested
24	Khosravi	Government of I. R. Iran	1:16-cv-02066	17/10/2016	D.C. Columbia	Iran	20,000,000	20,000,000
25	Martinez	Government of I. R. Iran	1:16-cv-02193	02/11/2016	D.C. Columbia	Iraq	NA	NA
26	Dibenedetto	Government of I. R. Iran	1:16-cv-02429	10/12/2016	D.C. Columbia	Beirut	120,000,000	NA
27	Hake	Bank Markazi, Bank Melli, Bank Melli PLC, NIOC	1:17-cv-00114	17/01/2017	D.C. Columbia	Iraq	NA	NA
28	Stearns	Government of I. R. Iran	1:17-cv-00131	19/01/2017	D.C. Columbia	Iraq	NA	NA
29	Levinson	Government of I. R. Iran	1:17-cv-00511	21/03/2017	D.C. Columbia	Iran	NA	NA
30	Frost	Government of I. R. Iran	1:17-cv-00603	04/04/2017	D.C. Columbia	Iraq	72,930,000	900,000,000
31	Brooks	Bank Markazi, Bank Melli, Bank Melli PLC, NIOC	1:17-cv-00737	20/04/2017	D.C. Columbia	Iraq	NA	NA
32	Holladay	Government of I. R. Iran, Bank Markazi, Bank Melli, Bank Melli PLC, NIOC	1:17-cv-00915	15/05/2017	D.C. Columbia	Iraq	NA	
33	Donaldson	Government of I. R. Iran	1:17-cv-01206	19/06/2017	D.C. Columbia	Iraq	NA	NA
34	Ewan	Government of I. R. Iran	1:17-cv-01628	11/08/2017	D.C. Columbia	Beirut	NA	1,000,000,000
35	Norman Heching	Government of I. R. Iran	1:17-cv-01659	15/08/2017	D.C. Columbia	Israel	350,000,000	NA
36	Lonnquist	Government of I. R. Iran	1:17-cv-01630	15/08/2017	D.C. Columbia	Kenya and Tanzania	120,000,000	1,000,000,000
37	Tollefson	Government of I. R. Iran	1:17-cv-01726	24/08/2017	D.C. Columbia	Iraq	NA	NA
38	Bathiard	Government of I. R. Iran	1:17-cv-02006	28/09/2017	D.C. Columbia	Beirut	150,000,000	250,000,000
39	Field	Bank Markazi, Bank Melli, NIOC	1:17-cv-02126	13/10/2017	D.C. Columbia	Iraq	NA	NA
40	Ayers	Government of I. R. Iran	1:18-cv-00265	05/02/2018	D.C. Columbia	Beirut	1,000,000,000	1,000,000,000
41	Campuzano	Government of I. R. Iran	1:18-cv-01682	07/03/2018	Illinois	Israel		
42	Dillaber	Government of I. R. Iran	1:18-cv-00554	09/03/2018	D.C. Columbia	United States	NA	NA
43	Schwartz	Government of I. R. Iran	1:18-cv-01349	06/06/2018	D.C. Columbia	Israel	NA	NA
44	Haskell	Government of I. R. Iran	1:18-cv-05306	12/06/2018	D.C. New York	United States	NA	NA
45	Global Aerospace	Government of I. R. Iran	1:18-cv-05373	18/06/2018	D.C. New York	United States	NA	NA
46	Jakubowicz	Government of I. R. Iran	1:18-cv-01450	19/06/2018	D.C. Columbia	Israel	NA	NA
47	Hartwick	Government of I. R. Iran, Bank Markazi, Bank Melli,	1:18-cv-01612	07/07/2018	D.C. Columbia	Iraq	NA	NA
48	Shahini	Government of I. R. Iran	1:18-cv-01619	10/07/2018	D.C. Columbia	Iran	NA	NA
49	W.A.	Government of I. R. Iran	1:18-cv-01883	10/08/2018	D.C. Columbia	Iraq	212,000,000	150,000,000

50	Zambon	Government of I. R. Iran	1:18-cv-02065	31/08/2018	D.C. Columbia	Iraq and Afghanistan	NA	NA
51	Brook	Government of I. R. Iran, Bank Markazi, Bank Melli,	1:18-cv-02248	27/09/2018	D.C. Columbia	Iraq	NA	NA
52	Williams	Government of I. R. Iran, Bank Markazi, Bank Melli,	1:18-cv-02425	23/10/2018	D.C. Columbia	Iraq	NA	NA
53	Dorsey	Government of I. R. Iran	1:18-cv-02636	14/11/2018	Ohio	Beirut	15,000,000	15,000,000
54	Bernhardt	Government of I. R. Iran	1:18-cv-02739	26/11/2018	D.C. Columbia	Afghanistan	68,500,000	300,000,000
55	Parker	Government of I. R. Iran	1:18-cv-11416	06/12/2018	D.C. New York	United States	NA	NA
56	Encinas	Government of I. R. Iran	1:18-cv-02568	14/12/2018	D.C. Columbia	Beirut	NA	NA
57	Jimenez	Government of I. R. Iran	1:18-cv-11875	17/12/2018	D.C. New York	United States	NA	NA
58	Panahi	Government of I. R. Iran	1:19-cv-00006	02/01/2019	Columbia	Iran	NA	NA
59	Arias	Government of I. R. Iran	1:19-cv-00041	03/01/2019	D.C. New York	United States	NA	NA
60	Ray	Government of I. R. Iran	1:19-cv-00012	12/01/2019	D.C. New York	United States	1,000,000,000	
61	Hudson	Government of I. R. Iran	1:19-cv-00377	13/02/2019	D.C. Columbia	Beirut	12,000,000,000	10,000,000,000
62	Acet	Government of I. R. Iran	1:19-cv-00464	25/02/2019	D.C. Columbia	Saudi Arabia	NA	NA
63	Pennington	Government of I. R. Iran	1:19-cv-00796	21/03/2019	Columbia	Iraq	NA	NA
64	Lee	Government of I. R. Iran	1:19-cv-00830	25/03/2019	D.C. Columbia	Iraq	NA	NA
65	McCarty	Government of I. R. Iran	1:19-cv-00853	26/03/2019	D.C. Columbia	Greece (Hijacking of TWA Flight 847)	9,000,000	
66	Wise	Bank Markazi Bank Melli, NIOC	1:19-cv-00995	09/04/2019	D.C. Columbia	Iraq	NA	NA
67	Felber	Government of I. R. Iran	1-19-cv-01027	12/04/2019	D.C. Columbia	Israel	NA	NA
68	Henkin	Government of I. R. Iran & Bank Markazi, Bank Melli,	1:19-cv-01184	24/04/2019	D.C. Columbia	Israel	60,000,000	300,000,000
69	Christie	Government of I. R. Iran	1:19-cv-01289	28/05/2019	D.C. Columbia	Saudi Arabia	NA	NA
70	Blunt	Government of I. R. Iran	1:19-cv-01696	11/06/2019	D.C. Columbia	Iraq and Afghanistan	NA	NA
71	Ratemo	Government of I. R. Iran	1:19-cv-02067	11/07/2019	D.C. Columbia	Kenya	1,000,000,000	NA
72	Amirentezam	Government of I. R. Iran	1:19-cv-02066	11/07/2019	D.C. Columbia	Iran	1,000,000,000	NA
73	Kar	Government of I. R. Iran	1:19-cv-02070	15/08/2019	D.C. Columbia	Iran	500,000,000	NA
74	Hammons	Government of I. R. Iran	1:19-cv-02518	20/08/2019	D.C. Columbia	Afghanistan	474,000,000	1,950,000,000
75	Zand	Government of I. R. Iran	1:19-cv-02602	28/08/2019	D.C. Columbia	Iran	500,000,000	
76	Przewozman	Government of I. R. Iran	1:19-cv-02601	28/08/2019	D.C. Columbia	Israel	100,000,000	NA
77	Mark	Government of I. R. Iran	1:19-cv-02855	24/09/2019	D.C. Columbia	Israel	NA	NA
78	Seligh	Government of I. R. Iran	1:19-cv-02889	25/09/2019	D.C. Columbia	Afghanistan	NA	1,000,000,000
79	Saharkhiz	Government of I. R. Iran	1:19-cv-02938	01/10/2019	D.C. Columbia	Iran	50,000,000	500,000,000
80	Johnson	Government of I. R. Iran	1:19-cv-03003	07/10/2019	D.C. Columbia	Iraq	NA	NA
81	Alinejad	Government of I. R. Iran	1:19-cv-03599	02/12/2019	D.C. Columbia	Iran	NA	NA
82	Farhat	Government of I. R. Iran	1:19-cv-03631	05/12/2019	D.C. Columbia	Beirut	540,000,000	250,000,000
83	Blank	Government of I. R. Iran	1:19-cv-03645	06/12/2019	D.C. Columbia	Saudi Arabia	NA	NA

Annex 1

Aide Mémoire of the U.S. Embassy in Tehran, dated 20 November 1954

20 NOV 1954

وزارت امور خارجه

AIDE-MEMOIRE

On November 16 representatives of the American Embassy met with His Excellency Dr. Jalal Abdoh of the Imperial Ministry of Foreign Affairs to pursue discussions on the proposed Treaty of Amity and Economic Relations betwwn the United States and Iran. In the course of this meeting Dr. Abdoh was fiven information concerning comments from the Department of State upon several matters discussed in a previous meeting on October 13 between representatives of the Government of Iran and of the American Embassy. The following summarizes the substance of the information conveyed by the Embassy representatives to Dr. Abdoh on November 16, and supplements the Embassy's Aide-Memoire of November 8, 1954, on the subject of the proposed treaty:

A. Article III, Paragraph 1.

In the meeting ofOctober 13 , the Iranian representative suggested that the words "privately owned" be inserted before "corporations, partnerships", etc., in the second sentence of this paragraph. The suggestion was made that letters might be exchanged between the two Governments in which it would be stated that for the purpose of interpreting the paragraph as revised it would be understood that all Iranian companies operating in the United States would enjoy the benefits ofArticleIII, indluding those Iranian companies which might be financed in whole or in part by the Government of Iran. The thought was expressed that reciprocal rights need not be conferred upon United States companies financed in whole or in part by funds from the United States Government, since any such companies or

corporations

corporations operating in Iran would in all probability be doint so on the basis of special agreements. It was understood that this suggestion was motivated by considerations relating to problems which might arise from the most-favored-nation provision included in Iranian treaties with third countries, if alien Government-owned corporations were permitted by virtue of the treaty with the United States to operate in Iran.

In commenting upon this matter the Department of State expressed the belief that there might have been some misunderstanding of the purpose of the paragraph. The provision is intended to confer no right upon corporations to operate in Iran, but merely to provide their recognition as corporate entities, principally in orde that they may prosecute or defend their rights in courts as corporate entities. In this sense, paragraph 1 is related to paragraph 2 of the Article. Under the draft treaty no United States corporation may engage in business in Iran except as permitted by Iran. The corporate status should be recognized to assure the right of foreign corporate entities - those which sell goods or furnish other services to Iran, as well as those permitted to operate in Iran - to free access to courts in order to collect debts, protect patent rights, enforce contracts, etc. The Department has enquired as to whether the Iranian representatives might reconsider their suggestion in light of this explanation.

B. Article III, Paragraph 3.

In the meeting of October 13, the Iranian representatives questioned the provision of this paragraph relating to arbitration proceedings conducted either by alien arbitrators or at a foreign situs. At that time representatives of the Embassy explained that the private settlement of disputes, particularly by arbitration, was highly necessary in many commercial and business transactions.

Complex

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Complex technical problems involving the interpretation of commercial contracts, the grading of products entering international trade, the survey of losses covered by insurance, and matters relating to industrial property rights, are ordinarily settled by private arbitration proceedings of an international character. In addition to those consideration, the Department of State has commented upon the long history of private arbitration in commercial communities. One of the main advantages of private arbitration, which is a purely voluntary arrangement of the two parties to contracts, is to expedite settlement of disputes without corwding public courts. The purpose of the provision is not to require Iran (or the United States) to enforce awards if there are substantive objections, but merely provides against discrimination of account of alien arbitrators or the foreign situs of the arbitration. Comparable provisions are included in United States treaties with other countries. It is hoped that the Iranian Government will find this provision acceptable in light of the foregoing explanation.

C. Article IV, Paragraph 1.

In the meeting of October 13 Iranian representatives suggested that the sentence reading "Each High Contracting Party.... shall refrain from applying unreasonable or discriminatory measures..." should be amended to read "Each High Contracting Party .... shall refrain from applying unlawful or discriminatory measures...". In commenting upon this suggestion the Department feels that the substitution of the word "unlawful" for "unreasonable" might destroy the effect of the provision. The original clause was intended to express a general requirement of careful regard, in accordance with the general purpose of the treaty, for legitimate interests of foreign investors without interference with the country's right of proper regulation. The change suggested might be interpreted

to mean that

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to mean that any related measure might be taken so long as it was consistent with the law, regardless of whether or not it was "reasonable". It was understood during the course of the discussion of November 16 that the Iranian suggestion would be reconsidered in light of these comments.

D. Article IV, Paragraph 2.

During the course of the meeting of October 13 and in subsequent conversation with Iranian representatives, the suggestion was made that this paragraph be revised to read as follows (the first two sentences being based upon the United States treaty with Ireland):

"Property of nationals and companies of either High Cont Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just and effective compensation, nor without compliance with the requirements of internaional law. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof."

The principal discussion relating to the suggested revision applied to the deletion of the words "including interests in property", appearing in the first sentence of the original paragraph as drafted by the Department of State. The Iranian representatives noted that these words were omitted from the Irish treaty with the United States.

In commenting upon this matter, the Department of State pointed out that the Irish treaty version is not used in more recent United States treaties; nevertheless, even in that document interests in property within thecontext of the related Article are covered in

Protocol (7) of the treaty. The Department considere that coverage of indirect interests is essential and in the mutual interest of Iran and the United States, since it is important to encourage foreign development through participation in Iranian corporations as well as directly. United States investment through third country corporations also would contribute to Iran's economic development. The Department therefore considers that indirect investments are of equal importance to direct investments, and should not be omitted from the provisions of the treaty. If the Irnian Government upon reconsideration should agree, but should prefer to include interests in investments by a separate document (such as an exchange of letters), the Department would be pleased to consider this suggestion, although it would prefer, if the Iranian Government perceives no objection, to include the words within the Article itself.

E. Article XIII, Paragraph 2.

In the October 13 meeting, the Iranian representatives suggested that the words "or application" be deleted from paragraph 2. with regard to this suggestion there was discussion of the circumstances under which Iran would find reference of disputes to the International Court of Justice to be acceptable.

In commenting upon this suggestion the Department expressed the view that deletion of the words"or application" might seriously curtailmeans of settlement of any disputes which might arise under the treaty, in view of the established practice of many nations of using the term "interpretation or application" in clauses providing for adjudication by the International Court. The Department noted that Iran has subscribed to the following agreements which contain both terms: Swedish-Iranian Commercial Air Service Agreement signed in Tehran, October 31, 1949; International Civil Aviation Convention, 1944; Constitution of the World Health Organization, 1946; Convention

on Privileges

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on Privileges and Immunities of the United Nations, 1946; Treaty of Peace with Japan, 1951; Protocol Limiting Cultivation of the Poppy Plant, etc., 1953. The use of both terms has been standard in United States bilateral and multilateral treaty provisions relating to the International Court.

The Department points out that adjudication of cases under the proposed treaty would fall under paragraph 1, Article 36, of the statute (matters specifically provided for in treaties) rather than paragraph 2 (compulsory jurisdiction) of that Article. The Department expressed the hope that in light of this explanation the Iranian representatives might see fit to accept the provisions as drafted.

American Embassy,

Tehran, November 20, 1954.

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Annex 2

Diplomatic Note from the U.S. Department of State to the Ministry of Foreign Affairs of I.R. Iran, 3 October 2018

The U.S. Department of State refers the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, signed at Tehran on August 15, 1955 ("the Treaty").

The policies and actions of the Government of the Islamic Republic of Iran against regional and international peace and security, including its material, financial, and other support for attacks and other hostile actions against United States persons, officials, and property, as well as United States partners and interests, have produced a situation which is incompatible with normal commercial and consular relations under a Treaty of Amity, Economic Relations and Consular Rights and with the peace and friendship which provided the basis on which the parties consented to be bound by the Treaty.

Accordingly, in accordance with Article XXIII, paragraph 3 of the Treaty and with its rights in light of the fundamental change in circumstances which has occurred with regard to those existing at the time of the conclusion of the Treaty, the United States hereby gives notice of the termination of the Treaty.

Department of State,

Washington, October 3, 2018.

GMD

DIPLOMATIC NOTE

Annex 3

Diplomatic Note from the Ministry of Foreign Affairs of I.R. Iran to the U.S. Department of State, 13 November 2018

Original in Persian and translation

جمهوری اسلامی ایران
وزارت امور خارجه

شماره : ۳۸۱/۲۸۹/۴۹۷۴۰۵۷
تاریخ : ۱۳۹۷/۸/۲۲
پیوست : دارد

بسمه تعالی

یادداشت

وزارت امور خارجه جمهوری اسلامی ایران با اظهار تعارفات خود به سفارت سوئیس (دفتر حفاظت منافع خارجی) در تهران، احتراماً اشعار می‌دارد:

موجب امتنان خواهد بود متن پیام جمهوری اسلامی ایران در پاسخ به یادداشت دیپلماتیک مورخ یازده مهرماه ۱۳۹۷(۳ اکتبر ۲۰۱۸) وزارت خارجه ایالات متحده آمریکا را بشرح زیر به مقصد آن منتقل نمایند. ترجمه غیررسمی پیام پیوست می باشد.

"دولت جمهوری اسلامی ایران ضمن رد ادعاهای بی اساس دولت ایالات متحده آمریکا در خصوص سیاست ها و اقدامات ایران در قبال صلح و امنیت بین المللی و منطقه ای، همواره در چارچوب سیاست های اصولی خویش همکاری های منطقه ای به منظور حفظ ثبات و امنیت بدون دخالت نیروهای فرامنطقه ای را تعقیب کرده و در این راستا، بر خلاف سیاست های خصمانه و مداخله جویانه ایالات متحده که آثار منفی، مخرب و مزمنی برای منطقه داشته؛ با دولت های همسایه تعامل و مناسبات دوستانه ای را دنبال نموده است.

صرف نظر از وضعیت حاکم بر روابط بین دو کشور و اقدامات مستمر خصمانه و غیرقانونی ایالات متحده آمریکا علیه مردم و دولت ایران، لازم است تاکید شود که «عهدنامه مودت ۱۳۳۴، درمورد روابط اقتصادی و حقوق کنسولی» فیمابین دو کشور حاوی ترتیباتی در حمایت از حقوق ناشی از فعالیت های اقتصادی و تجاری اتباع و شرکت های طرفین و همچنین آزادی تجارت و کشتیرانی بین قلمروهای دو کشور می باشد و از زمان اجرای عهدنامه در طول سال های گذشته بین اتباع، شرکت ها، و سرزمین های بین دو کشور، روابط تجاری برقرار بوده است.

از این رو، نقض مکرر ترتیبات این عهدنامه از سوی ایالات متحده آمریکا با معاذیر واهی نه تنها موجد حقی برای دولت آن کشور به منظور عدم اجرای مفاد عهدنامه مذکور نخواهد بود، بلکه نشانه بارز دیگری در عدم مسئولیت پذیری حقوقی و عدم تمکین آن دولت به تعهدات بین المللی خود می باشد. از سوی دیگر،

تغییر موضع دولت فعلی آمریکا نسبت به تعهدات این کشور ذیل عهدنامه مودت ۱۳۳۴ با توجیهات بی اساس و مغایر با اصول حقوق بین الملل هیچ خدشه ای به حقوق مکتسبه دولت، اتباع و شرکت های ایرانی و همچنین دعاوی مطروحه علیه آن کشور بر مبنای عهدنامه مذکور نخواهد گذاشت.

علاوه بر این، به اعتقاد جمهوری اسلامی ایران اقدام اخیر دولت ایالات متحده امریکا در اعمال تحریم ها علیه جمهوری اسلامی ایران از جمله اجرای مرحله دوم تحریم ها در ۱۳ آبان ۱۳۹۷ (۴ نوامبر ۲۰۱۸) ناقض پاراگراف ۱۰۲ دستور موقت دیوان بین المللی دادگستری مورخ ۳ اکتبر ۲۰۱۸ بوده و لذا موجد مسئولیت بین المللی ایالات متحده می باشد.

دولت جمهوری اسلامی ایران بار دیگر و پیرو یادداشت های شماره ۴۸۷۰۰۵۶ مورخ ۱۳۹۷/۳/۲۱ ، شماره ۴۸۷۵۰۶۵ مورخ ۱۳۹۷/۳/۲۹و شماره ۴۹۶۹۵۸۳ مورخ ۱۵ / ۸ / ۱۳۹۷، تاکید می نماید که تصمیم یکجانبه و غیرقانونی دولت ایالات متحده آمریکا در تاریخ های ۱۸ اردیبهشت ۱۳۹۷(۸ می ۲۰۱۸) و ۱۳ آبان ۱۳۹۷ (۴ نوامبر ۲۰۱۸) مبنی بر اعمال مجدد تحریم های اقتصادی و مالی که وفق برنامه جامع اقدام مشترک (برجام) رفع شده بود، ناقض تعهدات قراردادی و بین المللی ایالات متحده آمریکا از جمله تعهدات ناشی از عهدنامه مودت ۱۳۳۴، روابط اقتصادی و حقوق کنسولی فیمابین دو کشور بوده و موجب مسئولیت بین المللی آن دولت به دلیل ارتکاب این عمل متخلفانه بین المللی است.

بر این اساس، لازم و ضروری است دولت ایالات متحده آمریکا در اسرع وقت همهٔ اقدامات لازم را به منظور توقف عمل متخلفانه مذکور و رفع آثار ناشی از آن اتخاذ نموده و نسبت به جبران زیان های ناشی از آن اقدام نماید. بدیهی است دولت جمهوری اسلامی ایران هم چنان حقوق خود را برای پیگیری اقدامات متخلفانه دولت ایالات متحده آمریکا محفوظ دانسته و بر اساس قواعد قابل اعمال حقوق بین الملل و اسناد لازم الرعایه، آنها را مورد پیگیری قرار می دهد."

موقع را مغتنم شمرده، احترامات فائقه را تجدید می نماید.

سفارت سوئیس(دفتر حفاظت منافع خارجی) - تهران

Unofficial Translation

The Diplomatic Note No. ....

The Ministry of Foreign affairs of the Islamic Republic of Iran

The Ministry of Foreign affairs of the Islamic Republic of Iran presents its complements to the embassy of Switzerland (Foreign Interest Section) in Tehran and respectfully states that, it would be appreciated to convey the message of the Islamic Republic of Iran, in response to the Diplomatic Note dated October 3, 2018 of the US Department of State, as follows;

"The government of the Islamic Republic of Iran, while rejecting the baseless allegations of the Government of theUnited States against the policies and measures taken by Iran with regard to the regional and international peace and security; declares that, within the framework of its fundamental policies, it has always pursued regional cooperationwith a view to preserving stability and security of the region andwithout intervention by transregional forcesand, contrary to the belligerent and interventionist policies of the United States which have produced negative, destructive and chronic effects on the region, Iran has always pursued friendly relations and interactions with its neighbors.

Regardless of the situation governing the relations between the two countries and the persistent belligerent and illegal measures of the United States against the people and government of the Islamic Republic of Iran, it is necessary to stress that "The Treaty of Amity of 1955, economic relations, and consular rights" between the two countries comprises of certain arrangements in support of the rights of economic and commercial activities of nationals and companies of the parties and as well as freedom of commerce and navigation between the territories of the parties; and since the entry into force of the treaty, commercial relations between the nationals, companies and territories of the parties have persisted for decades and during past years.

Thus, recurrent violationsof the provisions of the Treaty of Amity of1955by the United States on groundless pretexts donot create any right for the United States to refrain from implementing the provisions thereof;it is also a clear indication of legal irresponsibility of the United States and its disregard forits

international obligations. On the other hand, the shift in the position of the United States vis-a-visits obligations under the 1955 Treaty of Amity under false pretexts and contrary to the principles of international law in no way prejudices the already acquired rights of the Iranian government, nationals and companies as well as the legal claims made against the United States in accordance with the said treaty.

Furthermore, any measures taken by the United States to impose sanctions against the Islamic Republic of Iran, including through the implementation of the second phase of the re-imposed sanctions on 4 November 2018 violates paragraph 102 of the Provisional Measures as ordered by the International Court of Justice on 3 October 2018 and therefore entails international responsibility of the United States.

Recalling its messages addressed to the Government of the United States contained in Note VerbaleNo. 381/289/4870056 dated 11 June 2018,Note No. 381/210/4875065 dated 19 June 2018, and NoteNo. 4969583 dated 6 November 2018 to the embassy of Switzerland in Tehran (Interest Section of the United States); the Islamic Republic of Iranonce gain emphasizes that the illegal and unilateral decisionsand measuresof the United States on dates May 8, and November 4, 2018 to re-impose economic and financial sanctions against the I.R. of Iran, which had been previously lifted under the JCPOA, are in violation of international and treaty obligations of the United States including those under the 1955 Treaty of Amity and highlights that this wrongful act entails its international responsibility.

In the light of the above, it isimperative and mandatory that the United States immediately takes all necessary measures in order to cease its wrongful acts and makes full reparation for the injury caused. Clearly, the Islamic Republic of Iran preserves its right to legally pursue such wrongful acts committed by the United Statesin accordance with the applicable rules of international law and legally binding instruments."

Annex 4

House Report, Rep. No. 1487, 94th Cong., 2d Session 7 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News

H.R. REP. 94-1487, H.R. Rep. No. 1487, 94TH Cong., 2ND
Sess. 1976, 1976 U.S.C.C.A.N. 6604, 1976 WL 14078 (Leg.Hist.)
**6604 P.L. 94-583, FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976
House Report (Judiciary Committee) No. 94-1487,
Sept. 9, 1976 (To accompany H.R. 11315)
Senate Report (Judiciary Committee) No. 94-1310,
Sept. 27, 1976 (To accompany S. 3553)
Cong. Record Vol. 122 (1976)
DATES OF CONSIDERATION AND PASSAGE
House September 29, 1976
Senate October 1, 1976
The House bill was passed in lieu of the Senate bill.
The House Report is set out.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE REPORT NO. 94-1487

Sept. 9, 1976

*1 The Committee on the Judiciary, to whom was referred the bill (H.R. 11315) to define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

* * * *

*6 PURPOSE

The purpose of the proposed legislation, as amended, is to provide when and how parties can maintain a lawsuit against a foreign state or its entities in the courts of the United States and to provide when a foreign state is entitled to sovereign immunity.

**6605 STATEMENT

The bill H.R. 11315 was introduced in accordance with the recommendations of an executive communication transmitted to the Congress by the Departments of State and Justice, and both Departments recommend its enactment with the amendments recommended in this report. The bill was the subject of hearings on June 2, 1976 and June 4, 1976 before this Committee's Subcommittee on Administrative Law and Governmental Relations. The amendments recommended to the bill are the result of matters discussed at those hearings and further developed in consultation with representatives of the Departments of State and Justice.

At the hearings on the bill it was pointed out that American citizens are increasingly coming into contact with foreign states and entities owned by foreign states. These interactions arise in a variety of circumstances, and they call into question whether our citizens will have access to the courts in order to resolve ordinary legal disputes. Instances of such contact occur when U.S. businessmen sell good to a *7 foreign state trading company, and disputes may arise concerning the purchase price. Another is when an American property owner agrees to sell land to a real estate investor that turns out to be a foreign government entity and conditions in the contract of sale

may become a subject of contention. Still another example occurs when a citizen crossing the street may be struck by an automobile owned by a foreign embassy.

At present, there are no comprehensive provisions in our law available to inform parties when they can have recourse to the courts to assert a legal claim against a foreign state. Unlike other legal systems, U.S. law does not afford plaintiffs and their counsel with a means to commence a suit that is specifically addressed to foreign state defendants. It does not provide firm standards as to when a foreign state may validly assert the defense of sovereign immunity; and, in the event a plaintiff should obtain a final judgment against a foreign state or one of its trading companies, our law does not provide the plaintiff with any means to obtain satisfaction of that judgment through execution against ordinary commercial assets.

In a modern world where foreign state enterprises are every day participants in commercial activities, H.R. 11315 is urgently needed legislation. The bill, which has been drafted over many years and which has involved extensive consultations within the administration, among bar associations and in the academic community, would accomplish four objectives:

First, the bill would codify the so-called ‘restrictive‘ principle of sovereign immunity, as presently recognized in international law. Under this principle, the immunity of a foreign state is ‘restricted‘ to suits involving a foreign state's public acts (jure imperii) and does not extend to suits based on its commercial or private acts (jure gestionis). This principle was adopted by the Department of State in 1952 and has been followed by the courts and by the executive branch ever since. Moreover, it is regularly applied against the United States in suits against the U.S. Government in foreign courts.

Second, the bill would insure that this restrictive principle of immunity is applied in litigation before U.S. courts. At present, this is ****6606** not always the case. Today, when a foreign state wishes to assert immunity, it will often request the Department of State to make a formal suggestion of immunity to the court. Although the State Department espouses the restrictive principle of immunity, the foreign state may attempt to bring diplomatic influences to bear upon the State Department's determination. A principal purpose of this bill is to transfer the determination of sovereign immunity from the executive branch to the judicial branch, thereby reducing the foreign policy implications of immunity determinations and assuring litigants that these often crucial decisions are made on purely legal grounds and under procedures that insure due process. The Department of State would be freed from pressures from foreign governments to recognize their immunity from suit and from any adverse consequences resulting from an unwillingness of the Department to support that immunity. As was brought out in the hearings on the bill, U.S. immunity practice would conform to the practice in virtually every other country-- where sovereign immunity decisions are made exclusively by the courts and not by a foreign affairs agency.

***8** Third, this bill would for the first time in U.S. law, provide a statutory procedure for making service upon, and obtaining in personam jurisdiction over, a foreign state. This would render unnecessary the practice of seizing and attaching the property of a foreign government for the purpose of obtaining jurisdiction.

Fourth, the bill would remedy, in part, the present predicament of a plaintiff who has obtained a judgment against a foreign state. Under existing law, a foreign state in our courts enjoys absolute immunity from execution, even in ordinary commercial litigation where commercial assets are available for the satisfaction of a judgment. H.R. 11315 seeks to restrict this broad immunity from execution. It would conform the execution immunity rules more closely to the jurisdiction immunity rules. It would provide the judgment creditor some remedy if, after a reasonable period, a foreign state or its enterprise failed to satisfy a final judgment.

BACKGROUND

Sovereign immunity is a doctrine of international law under which domestic courts, in appropriate cases, relinquish jurisdiction over a foreign state. It differs from diplomatic immunity (which is drawn into issue when an individual diplomat is sued). H.R. 11315 deals solely with sovereign immunity.

Sovereign immunity as a doctrine of international law was first recognized in our courts in the landmark case of The Schooner Exchange v. M'Faddon, 7 Cranch 116 (1812). There, Chief Justice Marshall upheld a plea of immunity, supported by an executive branch suggestion, by noting that a recognition of immunity was supported by the law and practice of nations. In the early part of this century, the Supreme Court began to place less emphasis on whether immunity was supported by the law and practice of nations, and relied instead on the practices and policies of the State Department. This trend reached its culmination in Ex Parte Peru, 318 U.S. 578 (1943) [1] and Mexico v. Hoffman, 324 U.S. 30 (1945). [2]

**6607 Partly in response to these decisions and partly in response to developments in international law, the Department of State adopted the restrictive principle of sovereign immunity in its 'Tate Letter' of 1952, 26 Department of State Bulletin 984. Thus, under the Tate letter, the Department undertook, in future sovereign immunity determinations, to recognize immunity in cases based on a foreign state's public acts, but not in cases based on commercial or private acts. The Tate letter, however, has posed a number of difficulties. From a legal standpoint, if the Department applies the restrictive principle in a given case, it is in the awkward position of a political institution trying to apply a legal standard to litigation already before the courts. Moreover, it does not have the machinery to take evidence, to hear witnesses, or to afford appellate review.

From a foreign relations standpoint, the initiative is left to the foreign state. The foreign state chooses which sovereign immunity determinations it will leave to the courts, and which it will take to the State Department. The foreign state also decides when it will attempt to exert diplomatic influences, thereby making it more difficult for the State Department to apply the Tate letter criteria.

*9 From the standpoint of the private litigant, considerable uncertainty results. A private party who deals with a foreign government entity cannot be certain that his legal dispute with a foreign state will not be decided on the basis of nonlegal considerations through the foreign government's intercession with the Department of State.

THE UNITED STATES IN FOREIGN COURTS

Since World War II, the United States has increasingly become involved in litigation in foreign courts. This litigation has involved such diverse activities as the purchase of goods and services by our embassies, employment of local personnel by our military bases, the construction or lease of buildings for our foreign missions, and traffic accidents involving U.S. Government-owned vehicles.

In the mid-1950's, when the United States first became involved in foreign suits on a large scale, foreign counsel retained by the Department of Justice were instructed to plead sovereign immunity in almost every instance. However, the executive branch learned that almost every country in Western Europe followed the restrictive principle of sovereign immunity and the Government's pleas of immunity were routinely denied in tort and contract cases where the necessary contacts with the forum were present. Thus, in the 1960's, it became the practice of the Department of Justice to avoid claiming immunity when the United States was sued in countries that had adopted the restrictive principle of immunity, but to invoke immunity in those remaining countries that still held to the absolute immunity doctrine. Beginning in the early 1970's, it became the consistent practice of the Department of Justice not to plead sovereign immunity abroad in instances where, under the Tate letter standards, the Department **6608 would not recognize a foreign state's immunity in this country.

In virtually every country, the United States has found that sovereign immunity is a question of international law to be determined by the courts. The United States cannot take recourse to a foreign affairs agency abroad as other states have done in this country when they seek a suggestion of immunity from the Department of State.

HISTORY OF THE BILL

H.R. 11315 is the product of many years of work by the Department of State and Justice, in consultation with members of the bar and the academic community. Study of possible legislation began in the mid-1960's. In the early 1970's, a number of draft bills were prepared and submitted for comment to many authorities and practitioners in the international law field. On January 31, 1973, a bill (H.R. 3493) was introduced in the 93d Congress, and referred to the Committee on the Judiciary. The bill H.R. 3493 was the subject of a subcommittee hearing on June 7, 1973. Although extensive advice had already been obtained from the private sector, in the course of the subcommittee's consideration it became apparent that a few segments of the private bar had not been fully consulted. It was pointed out that the 93d Congress bill contained some technical deficiencies which could be remedied-- particularly with respect to maritime cases and the jurisdictional provisions. The American Bar Association at ***10** the August 1976 meeting of its House of Delegates adopted a resolution urging approval of H.R. 11315. The letter of that association indicating its support is set out at the end of this report.

The current bill, H.R. 11315, contains revised language. It is essentially the same bill as was introduced in 1973, except for the technical improvements that have been made in the interim.

COMMITTEE AMENDMENTS

The committee, after careful consideration of the bill, made the following amendments:

1. In sections 1604 and 1609 of the bill, the committee has preserved the reference to ‘existing international agreements‘ but has deleted the language that would make this bill subject to ‘future‘ agreements. Mention of future agreements was found to be unnecessary and misleading. The purpose for including the reference was to take into account the possibility that sovereign immunity might become the subject of an international convention. Such a convention would, under article VI of the Constitution, take precedence, whether or not the bill was made expressly subject to a future international agreement. Moreover, it was thought best to eliminate any possible question that this language might be construed to authorize a future international agreement. However, the reference to existing international agreements is essential to make it clear that this bill would not supersede the special procedures provided in existing international agreements, such as the North Atlantic Treaty-- Status of Forces Agreement.

****6609** Section 1606, relating to public debt obligations, has been deleted and the former section 1605(c) has been renumbered as section 1606. The public debt provision was, at best, very limited. It applied only to debt obligations incurred ‘for general governmental purposes.‘ It did not apply to debts incurred either for specific government projects (such as the building of a dam) or to further a commerical activity. In practice, the provision would have had virtually no effect because U.S. underwriters of foreign government bonds and U.S. banks lending to foreign governments would invariably include an express waiver of immunity in the debt instrument. Moreover, both a sale of bonds to the public and a direct loan from a U.S. commercial bank to a foreign government are activities which are of a commercial nature and should be treated like other similar commercial transactions. Such commercial activities would not otherwise give rise to immunity and would be subject to U.S. regulation, such as that provided by the securities laws. Thus, on reconsideration of all of the factors, the committee has concluded that a public debt provision would serve no significant purpose and would be inappropriate.

3. Former section 1605(c), renumbered as section 1606, has also been revised in two other respects. First, it makes clear that the exception for punitive damages applies to political subdivisions of foreign states, as well as to the foreign state itself. This accords with current international practice. Second, it would eliminate the exception for interest prior to judgment. Such an exception is not supported by international practice. If a foreign state is not immune from suit, it should be liable for interest to the same extent as a private party.

***11** 4. Section 1608 has been substantially revised, with the principal revisions being in subsection (a). A number of bar association studies which otherwise expressed full support for the bill, pointed out that subsection (a), as previously drafted, created a significant gap in its provisions concerning service upon a foreign state through diplomatic channels. The Departments of Justice and State have reconsidered this provision and have indicated their preference for the revised language in the committee amendment. The committee has revised subsection (a) to fill the prior gap, and, at the same time, to minimize potential irritants to relations with foreign states. Subsection (a), as revised, would provide that service of a summons and complaint also be accompanied by a new document, called a notice of suit. The notice of suit is designed to provide a foreign state with an introductory explanation of the lawsuit, together with an explanation of the legal significance of the summons, complaint, and service.

The revised paragraphs (a)(2) and (b)(2) of section 1608 give emphasis to service under an 'applicable international convention on service of judicial documents.' At present, there is such an applicable international convention-- the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, TIAS 6638, 20 UST 361-- to which the Senate gave its advice and consent to ratification, and which entered into force for the United States in 1969. At present 18 nations are parties to this convention. In the committee's view, if a country has entered into such an international convention, priority should be given to this method for service.

****6610** Subsection (d) has been revised to delete the references to cross-claims and counterclaims. The existence of a counterclaim against a foreign state indicates that the foreign state has already entered an appearance in the lawsuit; thus, there is no necessity for affording the foreign state with a special time period in which to respond to a counterclaim. When a cross-claim is filed against a foreign state, rules 19 and 20, of the Federal Rules of Civil Procedure, require that original service be made. Under rules the bill, this would mean service under section 1608(a) or (b).

5. Finally, your committee has made a few perfecting amendments in the bill's provisions involving maritime jurisdiction. These include changes in section 1605(b) to make it clear that the delivery of notice to a master of a vessel under paragraph (1) does not itself constitute 'service'; and to make clear, in cases where the plaintiff is unaware that he has arrested a foreign state-owned vessel, that the 10-day period in paragraph (2) does not begin to run until the plaintiff has determined that a foreign state owns the vessel. Section 1609 has been amended to make it clear that it applies to arrests of a vessel, as well as to attachment and execution.

CONCLUSION

On the basis of the facts outlined in the executive communication and the testimony at the hearings on the bill, the committee finds that there is a clearly defined need for the enactment of these provisions into law. It is recommended that the amended bill be approved.

***12** SECTION-BY-SECTION ANALYSIS

This bill, entitled the 'Foreign Sovereign Immunities Act of 1976,' sets forth the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by foreign states before Federal and State courts in the United States. It is intended to preempt any other State or Federal law (excluding applicable international

agreements) for according immunity to foreign sovereigns, their political subdivisions, their agencies, and their instrumentalities. It is also designed to bring U.S. practice into conformity with that of most other nations by leaving sovereign immunity decisions exclusively to the courts, thereby discontinuing the practice of judicial deference to 'suggestions of immunity' from the executive branch. (See Ex Parte Peru, 318 U.S. 578, 588-589 (1943) [3] .)

The bill is not intended to affect the substantive law of liability. Nor is it intended to affect either diplomatic or consular immunity, or the attribution of responsibility between or among entities of a foreign state; for example, whether the proper entity of a foreign state has been sued; or whether an entity sued is liable in whole or in part for the claimed wrong.

Aside from setting forth comprehensive rules governing sovereign immunity, the bill prescribes: the jurisdiction of U.S. district courts in cases involving foreign states, procedures for commencing a lawsuit against foreign states in both Federal and State courts, and circumstances under which attachment and execution may be obtained **6611 against the property of foreign states to satisfy a judgment against foreign states in both Federal and State courts.

Constitutional authority for enacting such legislation derives from the constitutional power of the Congress to prescribe the jurisdiction of Federal courts (art. I, sec. 8, cl. 9; art. III, sec. 1); to define offenses against the 'Law of Nations' (art. I, sec. 8, cl. 10); to regulate commerce with foreign nations (art. I, sec. 8, cl. 3); and 'to make all Laws which shall be necessary and proper for carrying into Execution * * * all * * * Powers vested * * * in the Government of the United States,' including the judicial power of the United States over controversies between 'a State, or the Citizens thereof, and foreign States * * * .' (art. I, sec. 8, cl. 18; art. III, sec. 2, cl. 1). See National Bank v. Republic of China, 348 U.S. 356, 370-71 (1955) [4] (Reed J., dissenting); cf. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964). [5]

The committee wishes to emphasize that this section-by-section analysis supersedes the section-by-section analysis that accompanied the earlier version of the bill in the 93rd Congress (that is, S. 566 and H.R. 3493, 93d Cong., 1st sess.); the prior analysis should not be consulted in interpreting the current bill and its provisions, and no inferences should be drawn from differences between the two.

SEC. 2. JURISDICTION IN ACTIONS AGAINST FOREIGN STATES

Section 2 of the bill adds a new section 1330 to title 28 of the United States Code, and provides for subject matter and personal jurisdiction of U.S. district courts over foreign states and their political subdivisions, agencies, and instrumentalities. Section 1330 *13 provides a comprehensive jurisdictional scheme in cases involving foreign states. Such broad jurisdiction in the Federal courts should be conductive to uniformity in decision, which is desirable since a disparate treatment of cases involving foreign governments may have adverse foreign relations consequences. Plaintiffs, however, will have an election whether to proceed in Federal court or in a court of a State, subject to the removal provisions of section 6 of the bill.

(a) Subject Matter Jurisdiction.-- Section 1330(a) gives Federal district courts original jurisdiction in personam against foreign states (defined as including political subdivisions, agencies, and instrumentalities of foreign states). The jurisdiction extends to any claim with respect to which the foreign state is not entitled to immunity under sections 1605-1607 proposed in the bill, or under any applicable international agreement of the type contemplated by the proposed section 1604.

As in suits against the U.S. Government, jury trials are excluded. See 28 U.S.C. 2402. Actions tried by a court without jury will tend to **6612 promote a uniformity in decision where foreign governments are involved.

In addition, the jurisdiction of district courts in cases against foreign states is to be without regard to amount in controversy. This is intended to encourage the bringing of actions against foreign states in Federal courts. Under existing law, the district courts have diversity jurisdiction in actions in which foreign states are parties, but only where the amount in controversy exceeds $10,000. 28 U.S.C. 1332(a)(2) and (3). (See analysis of sec. 3 of the bill, below.)

A judgment dismissing an action for lack of jurisdiction because the foreign state is entitled to sovereign immunity would be determinative of the question of sovereign immunity. Thus, a private party, who lost on the question of jurisdiction, could not bring the same case in a State court claiming that the Federal court's decision extended only to the question of Federal jurisdiction and not to sovereign immunity.

(b) Personal Jurisdiction.-- Section 1330(b) provides, in effect, a Federal long-arm statute over foreign states (including political subdivisions, agencies, and instrumentalities of foreign states). It is patterned after the long-arm statute Congress enacted for the District of Columbia. Public Law 91-358, sec. 132(a), title I, 84 Stat. 549. The requirements of minimum jurisdictional contacts and adequate notice are embodied in the provision. Cf. International Shoe Co. v. Washington, 326 U.S. 310 (1945) [6] , and McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957) [7] . For personal jurisdiction to exist under section 1330(b), the claim must first of all be one over which the district courts have original jurisdiction under section 1330(a), meaning a claim for which the foreign state is not entitled to immunity. Significantly, each of the immunity provisions in the bill, sections 1605-1607, requires some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction. These immunity provisions, therefore, prescribe the necessary contacts which must exist before our courts can exercise personal jurisdiction. Besides incorporating these jurisdictional contracts by reference, section 1330(b) also satisfies the due process requirement of adequate notice by prescribing that proper service be *14 made under section 1608 of the bill. Thus, sections 1330(b), 1608, and 1605-1607 are all carefully interconnected.

(c) Effect of an Appearance.-- Section 1330(c) states that a mere appearance by a foreign state in an action does not confer personal jurisdiction with respect to claims which could not be brought as an independent action under this bill. The purpose is to make it clear that a foreign state does not subject itself to claims unrelated to the action solely by virtue of an appearance before a U.S. court. While the plaintiff is free to amend his complaint, he is not permitted to add claims for relief not based on transactions or occurrences listed in the bill. The term 'transaction or occurrence' includes each basis set forth in sections 1605-1607 for not granting immunity, including waivers.

**6613 SEC. 3. DIVERSITY JURISDICTION AS TO FOREIGN STATES

Section 3 of the bill amends those provisions of 28 U.S.C. 1332 which relate to diversity jurisdiction of U.S. district courts over foreign states. Since jurisdiction in actions against foreign states is comprehensively treated by the new section 1330, a similar jurisdictional basis under section 1332 becomes superfluous. The amendment deletes references to 'foreign states' now found in paragraphs (2) and (3) of 28 U.S.C. 1332(a), and adds a new paragraph (4) to provide for diversity jurisdiction in actions brought by a foreign state as plaintiff. These changes would not affect the applicability of section 1332 to entities that are both owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). See analysis to section 1603(b).

SEC. 4. NEW CHAPTER 97: SOVEREIGN IMMUNITY PROVISIONS

Section 4 of the bill adds a new chapter 97 to title 28, United States Code, which sets forth the legal standards under which Federal and State courts would henceforth determine all claims of sovereign immunity raised by foreign states and their political subdivisions, agencies, and instrumentalities. The specific sections of chapter 97 are as follows:

Section 1602. Findings and declaration of purpose

Section 1602 sets forth the central premise of the bill: That decisions on claims by foreign states to sovereign immunity are best made by the judiciary on the basis of a statutory regime which incorporates standards recognized under international law.

Although the general concept of sovereign immunity appears to be recognized in international law, its specific content and application have generally been left to the courts of individual nations. There is, however, a wide acceptance of the so-called restrictive theory of sovereign immunity; that is, that the sovereign immunity of foreign states should be 'restricted' to cases involving acts of a foreign state which are sovereign or governmental in nature, as opposed to acts which are either commercial in nature or those which private persons normally perform. This restrictive theory has been adhered to by the Department of State since the 'Tate Letter' of May 19, 1952. (26 Dept. of State Bull. 984 (1952).)

***15** Section 1603. Definitions

Section 1603 defines five terms that are used in the bill:

(a) Foreign state.-- Subsection (a) defines the term foreign state as used in all provisions of chapter 97, except section 1608. In section 1608, the term 'foreign state' refers only to the sovereign state itself.

As the definition indicates, the term 'foreign state' as used in every other section of chapter 97 includes not only the foreign state but also political subdivisions, agencies and instrumentalities of the foreign state. The term 'political subdivisions' includes all governmental units beneath the central government, including local governments.

(b) Agency or instrumentality of a foreign state.-- Subsection (b) defines an 'agency or instrumentality of a foreign state' as any entity ****6614** (1) which is a separate legal person, (2) which is an organ of a foreign state or of a political subdivision of a foreign state, or a majority of whose shares or other ownership interest is owned by a foreign state or by a foreign state's political subdivision, and (3) which is neither a citizen of a State of the United States as defined in 28 U.S.C. 1332(c) and (d) nor created under the laws of any third country.

The first criterion, that the entity be a separate legal person, is intended to include a corporation, association, foundation, or any other entity which, under the law of the foreign state where it was created, can sue or be sued in its own name, contract in its own name or hold property in its own name.

The second criterion requires that the entity be either an organ of a foreign state (or of a foreign state's political subdivision), or that a majority of the entity's shares or other ownership interest be owned by a foreign state (or by a foreign state's political subdivision). If such entities are entirely owned by a foreign state, they would of course be included within the definition. Where ownership is divided between a foreign state and private interests, the entity will be deemed to be an agency or instrumentality of a foreign state only if a majority of the ownership interests (shares of stock or otherwise) is owned by a foreign state or by a foreign state's political subdivision.

The third criterion excludes entities which are citizens of a State of the United States as defined in 28 U.S.C. 1332(c) and (d)-- for example a corporation organized and incorporated under the laws of the State of New York but owned by a foreign state. (See Amtorg Trading Corp. v. United States, 71 F.2d 524 (C.C.P.A. 1934).) Also excluded are entities which are created under the laws of third countries. The rationale behind these exclusions is that if a foreign state acquires or establishes a company or other legal entity in a foreign country, such entity is presumptively engaging in activities that are either commerical or private in nature.

An entity which does not fall within the definitions of sections 1603 (a) or (b) would not be entitled to sovereign immunity in any case before a Federal or State court. On the other hand, the fact that an entity is an 'agency or instrumentality of a foreign state' does not in itself establish an entitlement to sovereign immunity. A court would have to consider whether one of the sovereign immunity exceptions contained in the bill (see sections 1605-1607 and 1610-1611) was applicable.

As a general matter, entities which meet the definition of an 'agency or instrumentality of a foreign state' could assume a variety of forms, ***16** including a state trading corporation, a mining enterprise, a transport organization such as a shipping line or airline, a steel company, a central bank, an export association, a governmental procurement agency or a department or ministry which acts and is suable in its own name.

(c) United States.-- Paragraph (c) of section 1603 defines 'United States ' as including all territory and waters subject to the jurisdiction of the United States.

(d) Commercial activity.-- Paragraph (c) of section 1603 defines the term 'commercial activity' as including a broad spectrum of endeavor, from an individual commercial transaction or act to a regular course of commercial conduct. A 'regular course of commercial conduct' includes the carrying on of a commercial enterprise such as a mineral ****6615** extraction company, an airline or a state trading corporation. Certainly, if an activity is customarily carried on for profit, its commercial nature could readily be assumed. At the other end of the spectrum, a single contract, if of the same character as a contract which might be made by a private person, could constitute a 'particular transaction or act.'

As the definition indicates, the fact that goods or services to be procured through a contract are to be used for a public purpose is irrelevant; it is the essentially commercial nature of an activity or transaction that is critical. Thus, a contract by a foreign government to buy provisions or equipment for its armed forces or to construct a government building constitutes a commercial activity. The same would be true of a contract to make repairs on an embassy building. Such contracts should be considered to be commercial contracts, even if their ultimate object is to further a public function.

By contrast, a foreign state's mere participation in a foreign assistance program administered by the Agency for International Development (AID) is an activity whose essential nature is public or governmental, and it would not itself constitute a commercial activity. By the same token, a foreign state's activities in and 'contacts' with the United States resulting from or necessitated by participation in such a program would not in themselves constitute a sufficient commercial nexus with the United States so as to give rise to jurisdiction (see sec. 1330) or to assets which could be subjected to attachment or execution with respect to unrelated commercial transactions (see sec. 1610(b)). However, a transaction to obtain goods or services from private parties would not lose its otherwise commercial character because it was entered into in connection with an AID program. Also public or governmental and not commercial in nature, would be the employment of diplomatic, civil service, or military personnel, but not the employment of American citizens or third country nationals by the foreign state in the United States.

The courts would have a great deal of latitude in determining what is a 'commerical activity' for purposes of this bill. It has seemed unwise to attempt an excessively precise definition of this term, even if that were practicable.

Activities such as a foreign government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of laborers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation, would be among those included within the definition.

***17** (e) Commerical activity carried on in the United States by a foreign state.-- As paragraph (d) of section 1603 indicates, a commercial activity carried on in the United States by a foreign state would include not only a commercial transaction performed and executed in its entirety in the United States, but also a commercial transaction or act having a 'substantial contact ' with the United States. This definition includes cases based on commercial transactions performed in whole or in part in the United States, import-export transactions involving sales to, or purchases from, concerns in the United States, business torts occurring in the United States (cf. Sec. 1605(a)(5)), and an indebtedness incurred by a foreign state which negotiates or executes a loan agreement in the United States, or which receives financing from a private or public ****6616** lending institution located in the United States-- for example, loans, guarantees or insurance provided by the Export-Import Bank of the United States. It will be for the courts to determine whether a particular commercial activity has been performed in whole or in part in the United States. This definition, however, is intended to reflect a degree of contact beyond that occasioned simply by U.S. citizenship or U.S. residence of the plaintiff.

Section 1604. Immunity of foreign states from jurisdiction

New chapter 97 of title 28, United States Code, starts from a premise of immunity and then creates exceptions to the general principle. The chapter is thus cast in a manner consistent with the way in which the law of sovereign immunity has developed. Stating the basic principle in terms of immunity may be of some advantage to foreign states in doubtful cases, but, since sovereign immunity is an affirmative defense which must be specially pleaded, the burden will remain on the foreign state to produce evidence in support of its claim of immunity. Thus, evidence must be produced to establish that a foreign state or one of its subdivisions, agencies or instrumentalities is the defendant in the suit and that the plaintiff's claim relates to a public act of the foreign state-- that is, an act not within the exceptions in sections 1605-1607. Once the foreign state has produced such prima facie evidence of immunity, the burden of going forward would shift to the plaintiff to produce evidence establishing that the foreign state is not entitled to immunity. The ultimate burden of proving immunity would rest with the foreign state.

The immunity from jurisdiction provided in section 1604 applies to proceedings in both Federal and State courts. Section 1604 would be the only basis under which a foreign state could claim immunity from the jurisdiction of any Federal or State court in the United States.

All immunity provisions in sections 1604 through 1607 are made subject to 'existing' treaties and other international agreements to which the United States is a party. In the event an international agreement expressly conflicts with this bill, the international agreement would control. Thus, the bill would not alter the rights or duties of the United States under the NATO Status of Forces Agreement or similar agreements with other countries; nor would it alter the provisions of commercial contracts or agreements to which the United States is a party, calling for exclusive nonjudicial remedies through arbitration or other procedures for the settlement of disputes.

Treaties of friendship, commerce and navigation and bilateral air transport agreements often contain provisions relating to the immunity ***18** of foreign states. Many provisions in such agreements are consistent with, but do not go as far as, the current bill. To the extent such international agreements are silent on a question of immunity, the bill would control; the international agreement would control only where a conflict was manifest.

Section 1605. General exceptions to the jurisdictional immunity of foreign states

Section 1605 sets forth the general circumstances in which a claim of sovereign immunity by a foreign state, as defined in section 1603(a), would not be recognized in a Federal or State court in the United States.

**6617 (a)(1) Waivers.-- Section 1605(a)(1) treats explicit and implied waivers by foreign states of sovereign immunity. With respect to explicit waivers, a foreign state may renounce its immunity by treaty, as has been done by the United States with respect to commercial and other activities in a series of treaties of friendship, commerce, and navigation, or a foreign state may waive its immunity in a contract with a private party. Since the sovereign immunity of a political subdivision, agency or instrumentality of a foreign state derives from the foreign state itself, the foreign state may waive the immunity of its political subdivisions, agencies or instrumentalities.

With respect to implicit waivers, the courts have found such waivers in cases where a foreign state has agreed to arbitration in another country or where a foreign state has agreed that the law of a particular country should govern a contract. An implicit waiver would also include a situation where a foreign state has filed a responsive pleading in an action without raising the defense of sovereign immunity.

The language, 'notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver, ' is designed to exclude a withdrawal of the waiver both after and before a dispute arises except in accordance with the terms of the original waiver. In other words, if the foreign state agrees to a waiver of sovereign immunity in a contract, that waiver may subsequently be withdrawn only in a manner consistent with the expression of the waiver in the contract. Some court decisions have allowed subsequent and unilateral rescissions of waivers by foreign states. But the better view, and the one followed in this section, is that a foreign state which has induced a private person into a contract by promising not to invoke its immunity cannot, when a dispute arises, go back on its promise and seek to revoke the waiver unilaterally.

(a)(2) Commercial activities having a nexus with the United States.-- Section 1605(a)(2) treats what is probably the most important instance in which foreign states are denied immunity, that in which the foreign state engages in a commercial activity. The definition of a 'commercial activity' is set forth in section 1603(d) of the bill, and is discussed in the analysis to that section.

Section 1605(a)(2) mentions three situations in which a foreign state would not be entitled to immunity with respect to a claim based upon a commercial activity. The first of these situations is where the 'commercial activity (is) carried on in the United States by the foreign *19 state.' This phrase is defined in section 1603(e) of the bill. See the analysis to that section.

The second situation, an 'act performed in the United States in connection with a commercial activity of the foreign state elsewhere,' looks to conduct of the foreign state in the United States which relates either to a regular course of commercial conduct elsewhere or to a particular commercial transaction concluded or carried out in part elsewhere. Examples of this type of situation might include: a representation in the United States by an agent of a foreign state that leads to an action for restitution based on unjust enrichment; an act in the United States that violates U.S. securities laws or regulations; the wrongful discharge in the United States of an employee of the foreign state who **6618 has been employed in connection with a commercial activity carried on in some third country.

Although some or all of these acts might also be considered to be a 'commercial activity carried on in the United States,' as broadly defined in section 1603(e), it has seemed advisable to provide expressly for the case where a claim arises out of a specific act in the United States which is commercial or private in nature and which relates to a commercial activity abroad. It should be noted that the acts (or omissions) encompassed in this category are limited to those which in and of themselves are sufficient to form the basis of a cause of action.

The third situation-- 'an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States'-- would embrace commercial conduct abroad having direct effects within the United States which would subject such conduct to the exercise of jurisdiction by the United States consistent with principles set forth in section 18, Restatement of the Law, Second, Foreign Relations Law of the United States (1965).

Neither the term 'direct effect' nor the concept of 'substantial contacts ' embodied in section 1603(e) is intended to alter the application of the Sherman Antitrust Act, 15 U.S.C. 1, et seq., to any defendant. Thus, the bill does not affect the holdings in such cases as United States v. Pacific & Arctic Ry. & Nav. Co., 228 U.S. 87 (1913) [8] , or Pacific Seafarers, Inc. v. Pacific Far East Line, Inc., 404 F.2d 803 (D.C. Cir. 1968), cert. denied, 393 U.S. 1093 (1969) [9] .

(a)(3) Expropriation claims.-- Section 1605(a)(3) would, in two categories of cases, deny immunity where 'rights in property taken in violation of international law are in issue.' The first category involves cases where the property in question or any property exchanged for such property is present in the United States, and where such presence is in connection with a commercial activity carried on in the United States by the foreign state, or political subdivision, agency or instrumentality of the foreign state. The second category is where the property, or any property exchanged for such property, is (i) owned or operated by an agency or instrumentality of a foreign state and (ii) that agency or instrumentality is engaged in a commercial activity in the United States. Under the second category, the property need not be present in connection with a commercial activity of the agency or instrumentality.

The term 'taken in violation of international law' would include the nationalization or expropriation of property without payment of the ***20** prompt adequate and effective compensation required by international law. It would also include takings which are arbitrary or discriminatory in nature. Since, however, this section deals solely with issues of immunity, it in no way affects existing law on the extent to which, if at all, the 'act of state' doctrine may be applicable. See 22 U.S.C. 2370(e)(2). [10]

(a)(4) Immovable, inherited, and gift property.-- Section 1605(a)(4) denies immunity in litigation relating to rights in real estate and in inherited or gift property located in the United States. It is established ****6619** that, as set forth in the 'Tate Letter' of 1952, sovereign immunity should not be granted in actions with respect to real property, diplomatic and consular property excepted. 26 Department of State Bulletin 984 (1952). It does not matter whether a particular piece of property is used for commercial or public purposes.

It is maintainable that the exception mentioned in the 'Tate Letter ' with respect to diplomatic and consular property is limited to questions of attachment and execution and does not apply to an adjudication of rights in that property. Thus the Vienna Convention on Diplomatic Relations, concluded in 1961, 23 UST 3227, TIAS 7502 (1972), provides in article 22 that the 'premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.' Actions short of attachment or execution seem to be permitted under the Convention, and a foreign state cannot deny to the local state the right to adjudicate questions of ownership, rent, servitudes, and similar matters, as long as the foreign state's possession of the premises is not disturbed.

There is general agreement that a foreign state may not claim immunity when the suit against it relates to rights in property, real or personal, obtained by gift or inherited by the foreign state and situated or administered in the country where the suit is brought. As stated in the 'Tate Letter,' immunity should not be granted 'with respect to the disposition of the property of a deceased person even though a foreign sovereign is the beneficiary.' The reason is that, in claiming rights in a decedent's estate or obtained by gift, the foreign state claims the same right which is enjoyed by private persons.

(a)(5) Noncommercial torts.-- Section 1605(a)(5) is directed primarily at the problem of traffic accidents but is cast in general terms ***21** as applying to all tort actions for money damages, not otherwise encompassed by section 1605(a)(2) relating to commercial activities. It denies immunity as to claims for personal injury or death, or for damage to or loss of property, caused by the tortious act or omission of a foreign state or its officials or employees, acting within the scope of their authority; the tortious act or omission must occur within the jurisdiction of the United States, and must not come within one of the exceptions enumerated in the second paragraph of the subsection.

****6620** As used in section 1605(a)(5), the phrase 'tortious act or omission' is meant to include causes of action which are based on strict liability as well as on negligence. The exceptions provided in subparagraphs (A) and (B) of section 1605(a) (5) correspond to many of the claims with respect to which the U.S. Government retains immunity under the Federal Tort Claims Act, 28 U.S.C. 2680(a) and (h).

Like other provisions in the bill, section 1605 is subject to existing international agreements (see section 1604), including Status of Forces Agreements; if a remedy is available under a Status of Forces Agreement, the foreign state is immune from such tort claims as are encompassed in sections 1605(a)(2) and 1605(a)(5).

Since the bill deals only with the immunity of foreign states and not its diplomatic or consular representatives, section 1605(a)(5) would not govern suits against diplomatic or consular representatives but only suits against the foreign state. It is noteworthy in this regard that while article 43 of the Vienna Convention on Consular Relations of 1963, 21 UST 77, TIAS 6820 (1970), expressly abolishes the immunity of consular officers with respect to civil actions brought by a third party for 'damage arising from an accident in the receiving state caused by a vehicle, vessel or aircraft,' there is no such provision in the Vienna Convention on Diplomatic Relations of 1961, supra. Consequently, no case relating to a traffic accident can be brought against a member of a diplomatic mission.

The purpose of section 1605(a)(5) is to permit the victim of a traffic accident or other noncommercial tort to maintain an action against the foreign state to the extent otherwise provided by law. See, however, section 1605(c).

(b) Maritime liens.-- Section 1605(b) denies immunity to a foreign state in cases where (i) a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of that foreign state, (ii) the maritime lien is based upon a commerical activity of the foreign state, and (iii) the conditions in paragraphs (1) and (2) of section 1605(b) have been complied with.

The purpose of this subsection is the permit a plaintiff to bring suit in a U.S. district court arising out of a maritime lien involving a vessel or cargo of a foreign sovereign without arresting the vessel, by instituting an in personam action against the foreign state in a manner analogous to bringing such a suit against the United States. Cf. 46 U.S.C. 741, et seq. In view of section 1609 of the bill, section 1605(b) is designed to avoid arrests of vessels or cargo of a foreign state to commence a suit. Instead, as provided in paragraph (1), a copy of the summons and complaint must be delivered to the master or other person having possession of the vessel or cargo (such as the second in command of the ship).

If, however, the vessel or its cargo is arrested or attached, the plaintiff will lose his in personam remedy and the foreign state will ***22** be entitled to immunity-- except in the case where the plaintiff was unaware that the vessel or cargo of a foreign state was involved. This would be a rare case because the flag of the vessel, the circumstances giving rise to the maritime lien, or the information contained in ship registries kept in ports throughout the United States should make known the ownership of the vessel in question, if not the cargo. By contrast, evidence that a party had relied on a standard registry ****6621** of ships, which did not reveal a foreign state's interest in a vessel, would be prima facie evidence of the party's unawareness that a vessel of a foreign state was involved.

More generally, a party could seek to establish its lack of awareness of the foreign state's ownership by submitting affidavits from itself and from its counsel. If, however, the vessel or cargo is mistakenly arrested, such arrest or attachment must, under section 1609, be immediately dissolved when the foreign state brings to the court's attention its interest in the vessel or cargo and, hence, its right to immunity from arrest.

Under paragraph (2), the plaintiff must also be able to prove that the procedures for service under section 1608(a) or (b) have commenced-- for example, that the clerk of the court has mailed the requisite copies of the summons and complaint. The plaintiff need not show that service has actually been made under section 1608(c). The reason for this second requirement is to help make certain that the foreign state concerned receives prompt and actual notice of the institution of a suit in admiralty in the United States, even if the copies served on the master of the vessel should fail to reach the foreign state.

Section 1605(b) would not preclude a suit in accordance with other provisions of the bill-- e.g., section 1605(a)(2). Nor would it preclude a second action, otherwise permissible, to recover the amount by which the value of the maritime lien exceeds the recovery in the first action.

Section 1606. Extent of liability

Section 1606 makes clear that if the foreign state, political subdivision, agency or instrumentality is not entitled to immunity from jurisdiction, liability exists as it would for a private party under like circumstances. However, the tort liability of a foreign state itself, and of its political subdivision (but not of an agency or instrumentality of a foreign state) does not extend to punitive damages. Under current international practice, punitive damages are usually not assessed against foreign states. See 5 Hackwork, Digest of International Law, 723-26 (1943); Garcia-Amador, State Responsibility, 94 Hague Recueil des Cours 365, 476-81 (1958). Interest prior to judgment and costs may be assessed against a foreign state just as against a private party Cf. 46 U.S.C. 743, 745.

Consistent with this section, a court could, when circumstances were clearly appropriate, order an injunction or specific performance. But this is not determinative of the power of the court to enforce such an order. For example, a foreign diplomat or official could not be imprisoned for contempt because of his government's violation of an injunction. See 22 U.S.C. 252. Also a fine for violation of an injunction may be unenforceable if immunity exists under sections 1609-1610.

***23** The bill does not attempt to deal with questions of discovery. Existing law appears to be adequate in this area. For example, if a private plaintiff sought the production of sensitive governmental documents of a foreign state, concepts of governmental privilege would apply. [11] Or if a plaintiff sought to depose a diplomat in the United States or a high-ranking official of a foreign government, diplomatic and official immunity would apply. However, appropriate remedies would be ****6622** available under Rule 37, F.R. Civ. P., for an unjustifiable failure to make discovery.

Section 1607. Counterclaims

Section 1607 applies to counterclaims against a foreign state which brings an action or intervenes in an action in a Federal or State court. It would deny immunity in three situations. First, immunity would be denied as to any counterclaim for which the foreign state would not be entitled to immunity under section 1605, if the counterclaim had been brought as a direct claim in a separate action against the foreign state. This provision is based upon article I of the European Convention on State Immunity 11 Int'l Legal Materials 470 (1972).

Second, even if a foreign state would otherwise be entitled to immunity under sections 1604-1606, it would not be immune from a counterclaim 'arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state.' This is the same terminology as that used in rule 13(a) of the Federal Rules of Civil Procedure and is consistent with section 70(2)(b), Restatement of the Law, Second, Foreign Relations Law of the United States (1965). Certainly, if a foreign state brings or intervenes in an action based on a particular transaction or occurrence, it should not obtain the benefits of litigation before U.S. courts while avoiding any legal liabilities claimed against it and arising from that same transaction or occurrence. See, Alfred Dunhill of London, Inc., v. Cuba, . . . U.S. . . . No. 73-1288, decided May 24, 1976). [12]

Third, notwithstanding that the foreign state may be immune under subsections (a) and (b), the foreign state nevertheless would not be immune from a setoff. Subsection (c) codifies the rule enunciated in National Bank v. Republic of China, 348 U.S. 356 (1955). [13]

Section 1608. Service; time to answer; default

Section 1608 sets forth the exclusive procedures with respect to service on, the filing of an answer or other responsive pleading by, and obtaining a default judgment against a foreign state or its political subdivisions, agencies or instrumentalities. These procedural provisions are intended to fill a void in existing Federal and State law, and to insure that private persons have adequate means for commencing a suit against a foreign state to seek redress in the courts.

Provisions in section 1608 are closely interconnected with other parts of the bill-- particularly the proposed section 1330 and sections 1605-1607. If notice is served under section 1608 and if the jurisdictional contacts embodied in sections 1605-1607 are satisfied, personal jurisdiction over a foreign state would exist under section 1330(b). In addition to its integral role in the bill, section 1608 follows on the ***24** precedents of other statutory service provisions in areas of unusual Federal interest. See, for example, 8 U.S.C. 1105a(3) and 15 U.S.C. 21(f) and 77v.

****6623** (a) Service on Foreign States and Political Subdivisions.-- Subsection (a) of section 1608 sets forth the exclusive procedures for service on a foreign state, or political subdivision thereof, but not on an agency or instrumentality of a foreign state which is covered in subsection (b). There is a hierarchy in the methods of service. Paragraph (1) provides for service in accordance with any special arrangement which may have been agreed upon between a plaintiff and the foreign state or political subdivision. If such an arrangement exists, service must be made under this method. The purpose of subsection (a)(1) is to encourage potential plaintiffs and foreign states to agree to a procedure on service.

If no special arrangement exists, paragraph (2) would permit service in accordance with an applicable international convention on service of judicial documents. The only such convention to which the United States is at present a party is the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, 20 UST 361, TIAS 6638 (1969). In order for an international convention to be 'applicable', both the United States and the foreign state concerned must be a party to the convention.

If neither an applicable international convention nor a special arrangement exists, paragraph (3) would provide for service by mail. The clerk of the court would send a copy of a 'notice of suit' as prescribed by the Secretary of State by regulation, together with a copy of the summons and complaint, by mail to the head of the foreign state's ministry of foreign affairs or its equivalent. This procedure is based on rule 4(i)(1)(D), F.R. Civ. P.

Finally, as a method of last resort, paragraph (4) would provide for service through diplomatic channels if service could not be made by mail within 30 days. The clerk of the court would send two copies of the notice of suit, summons and complaint to the Secretary of State for transmittal through diplomatic channels. Transmittal through diplomatic channels would mean that the Office of Special Consular Services in the Department of State will pouch a copy of these papers to the U.S. Embassy in the foreign state in question. The U.S. Embassy, in turn, would prepare a diplomatic note of transmittal and deliver the diplomatic note with the other papers to the appropriate official in the ministry of foreign affairs of the foreign state. Use of diplomatic channels could also include transmittal of the papers by the Department of State to the foreign state's embassy in Washington, D.C. 'Transmittal' of the notice of suit, summons and complaint does not require that the foreign state formally accept these papers. It only requires that these papers be transmitted in such a way that the foreign state has actual notice of the suit. All papers to be served would be accompanied by translations into an official language of the foreign state. Finally, the Secretary of State would be required to send back to the court the diplomatic note used in transmitting the papers to the foreign state.

A 'notice of suit' as used in this section would advise a foreign state of the legal proceeding, it would explain the legal significance of the summons, complaint and service, and it would indicate what ***25** steps are available under or required by U.S. law in order to defend the action. In short, it would provide an introductory explanation to a foreign state that may be unfamiliar with U.S. law or procedures.

****6624** Service through diplomatic channels is widely used in international practice. It is provided for in the European Convention on State Immunity, supra, which was negotiated by 18 European nations. It is accepted and indeed preferred by the United States in suits brought against the United States Government in foreign courts. See Department of State's circular instruction No. CA-10922, June 16, 1961, 56 Am.J.Int'l L. 523-33 (1962).

(b) Service on Agencies or Instrumentalities.-- Subsection (b) of section 1608 provides the methods under which service shall be made upon an agency or instrumentality of a foreign state, as defined in section 1603 (b). Again, service must always be made in accordance with any special arrangement for service between a plaintiff and the agency or instrumentality. If no such arrangement exists, then service must be made under subsection (b)(2) which provides for service upon officers, or managing, general or appointed agents in the United States of the agency or instrumentality-- or in the alternative, in accordance with an applicable international convention such as the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, supra.

If there is no special arrangement and if the agency or instrumentality has no representative in the United States, service may be made under one of the three methods provided in subsection (b)(3). The first two methods provide for service by letter rogatory or request or by mail. The third method, subparagraph (C), authorizes a court to fashion a method of service, for example under rule 83, F.R. Civ. P., provided the method is 'consistent with the law of the place where service is to be made.' This latter language takes into account the fact that the laws of foreign countries may prohibit the service in their country of judicial documents by process servers from the United States. It is contemplated that no court will direct service upon a foreign state by appointing someone to make a physical attempt at service abroad, unless it is clearly consistent with the law of the foreign jurisdiction where service is to be attempted. It is also contemplated that the courts will not direct service in the United States upon diplomatic representatives, Hellenic Lines Ltd. v. Moore, 345 F.2d 978 (D.C. Cir. 1965), or upon consular representatives, Oster v. Dominion of Canada, 144 F.Supp. 746 (N.D.N.Y. 1956), aff'd, 238 F.2d 400 (2d Cir. 1956).

(c) When Service Is Made.-- Subsection (c) of section 1608 establishes the time when service shall be deemed to have been made under each of the methods provided in subsections (a) and (b).

(d) Time To Answer or Reply.-- Subsection (d) of section 1608 gives each foreign state, political subdivision thereof or agency or instrumentality of a foreign state or political subdivision up to 60 days from the time service is

deemed to have been made in which to answer or file a responsive pleading. This corresponds to similar provisions applicable in suits against the United States or its officers or agencies. Rule 12(a), F.R. Civ. P.

(e) Default Judgments.-- Subdivision (e) of section 1608 provides that no default judgment may be entered against a foreign state, or ***26** its political subdivisions, agencies or instrumentalities, 'unless the claimant establishes his claim or right to relief by evidence satisfactory ****6625** to the court.' This is the same requirement applicable to default judgments against the U.S. Government under rule 55(e), F.R. Civ. P. In determining whether the claimant has established his claim or right to relief, it is expected that courts will take into account the extent to which the plaintiff's case depends on appropriate discovery against the foreign state. [14] Once the default judgment is entered, notice of such judgment must be sent in the manner prescribed for service in sections 1608(a) or (b).

Special note should be made of two means which are currently in use in attempting to commence litigation against a foreign state. First, the current practice of attempting to commence a suit by attachment of a foreign state's property would be prohibited under section 1609 in the bill, because of foreign relations considerations and because such attachments are rendered unnecessary by the liberal service and jurisdictional provisions of the bill. See the analysis to section 1609.

A second means, of questionable validity, involves the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state. Section 1608 precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the Vienna Convention on Diplomatic Relations, 23 UST 3227, TIAS 7502 (1972), which entered into force in the United States on December 13, 1972. Service on an embassy by mail would be precluded under this bill. See 71 Dept. of State Bull. 458-59 (1974).

Section 1609. Immunity from Attachment and Execution of Property of a Foreign State

As in the case of section 1604 of the bill with respect to jurisdiction, section 1609 states a general proposition that the property of a foreign state, as defined in section 1603(a), is immune from attachment and from execution, and then exceptions to this proposition are carved out in sections 1610 and 1611. Here, it should be pointed out that neither section 1610 nor 1611 would permit an attachment for the purpose of obtaining jurisdiction over a foreign state or its property. For this reason, section 1609 has the effect of precluding attachments as a means for commencing a lawsuit.

Attachment of foreign government property for jurisdictional purposes has been recognized 'where under international law a foreign government is not immune from suit', and where the property in the United States is commercial in nature. Weilamann v. Chase Manhattan Bank, 21 Misc.2d 1086, 192 N.Y.S.2d 469 (Sup. Ct. N.Y. 1959). Even in such cases, however, it has been recognized that property attached for jurisdictional purposes cannot be retained to satisfy a judgment because, under current practice, the property of a foreign sovereign is immune from execution.

Attachments for jurisdictional purposes have been criticized as involving U.S. courts in litigation not involving any significant U.S. interest or jurisdictional contacts, apart from the fortuitous presence of property in the jurisdiction. Such cases frequently require the application of foreign law to events which occur entirely abroad.

***27** ****6626** Such attachments can also give rise to serious friction in United States' foreign relations. In some cases, plaintiffs obtain numerous attachments over a variety of foreign government assets found in various parts of the United States. This shotgun approach has caused significant irritation to many foreign governments.

At the same time, one of the fundamental purposes of this bill is to provide a long-arm statute that makes attachment for jurisdictional purposes unnecessary in cases where there is a nexus between the claim and the

United States. Claimants will clearly benefit from the expanded methods under the bill for service on a foreign state (sec. 1608), as well as from the certainty that section 1330(b) of the bill confers personal jurisdiction over a foreign state in Federal and State courts as to every claim for which the foreign state is not entitled to immunity. The elimination of attachment as a vehicle for commencing a lawsuit will ease the conduct of foreign relations by the United States and help eliminate the necessity for determinations of claims of sovereign immunity by the State Department.

Section 1610. Exceptions to Immunity from Attachment or Execution

Section 1610 sets forth circumstances under which the property of a foreign state is not immune from attachment or execution to satisfy a judgment. Through the enforcement or judgments against foreign state property remains a somewhat controversial subject in international law, there is a marked trend toward limiting the immunity from execution.

A number of treaties of friendship, commerce and navigation concluded by the United States permit execution of judgments against foreign publicly owned or controlled enterprises (for example, Treaty with Japan, April 2, 1953, art. 18(2), 4 UST 2063, TIAS 2863). The widely ratified Brussels Convention for the Unification of Certain Rules relating to the Immunity of State-Owned Vessels, April 10, 1926, 196 L.N.T.S. 199, allows execution of judgments against public vessels engaged in commercial services in the same way as against privately owned vessels. Although not a party to this treaty, the United States follows a policy of not claiming immunity for its publicly-owned merchant vessels, both domestically, 46 U.S.C. 742, 781, and abroad, 46 U.S.C. 747; 2 Hackworth, Digest of International Law, 438-39 (1941). Articles 20 and 21 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 UST 1606, TIAS 5639, to which the United States is a party, recognize the liability to execution under appropriate circumstances of state-owned vessels used in commercial service.

However, the traditional view in the United States concerning execution has been that the property of foreign states is absolutely immune from execution. Dexter and Carpenter, In. v. Kunglig Jarnvagsstyrelsen, 43 F.2d 70; (2d Cir. 1930). Even after the 'Tate Letter' of 1952, this continued to be the position of the Department of State and of the courts. See, Weilamann v. Chase Manhattan Bank, 21 Misc.2d 1086, 192 N.Y.S.2d 469, 473 (Sup. Ct. N.Y. 1959). Sections 1610(a) and (b) are intended to modify this rule by partially lowering the barrier of immunity from execution, so as to make this immunity conform more closely with the provisions on jurisdictional immunity in the bill.

***28** ****6627** (a) Execution Against Property of Foreign States. Section 1610(a) relates to execution against property of a foreign state, including a political subdivision, agency, or instrumentality of a foreign state. The term 'attachment in aid of execution' is intended to include attachments, garnishments, and supplemental proceedings available under applicable Federal or State law to obtain satisfaction of a judgment. See rule 69, F.R. Civ. P. The property in question must be used for a commercial activity in the United States. If so, attachment in aid of execution, and execution, upon judgments entered by Federal or State courts against the foreign state would be permitted in any of the circumstances set forth in paragraphs (1)-(5) of section 1610(a).

Paragraph (1) relates to explicit and implied waivers, and is governed by the same principles that apply to waivers of immunity from jurisdiction under section 1605(a)(1) of the bill. A foreign state may have waived its immunity from execution, inter alia, by the provisions of a treaty, a contract, an official statement, or certain steps taken by the foreign state in the proceedings leading to judgment or to execution. As in section 1605(a)(1), a waiver on behalf of an agency or instrumentality of a foreign state may be made either by the agency or instrumentality or by the foreign state itself.

Paragraph (2) of section 1610(a) denies immunity from execution against property used by a foreign state for a commercial activity in the United States, provided that the commercial activity gave rise to the claim upon which the judgment is based. Included would be commercial activities encompassed by section 1605(a)(2). The provision also includes a commercial activity giving rise to a claim with respect to which the foreign state has waived immunity under section 1605(a)(1). In addition, it includes a commercial activity which gave rise to a maritime lien with respect to which an admiralty suit was brought under section 1605(b). One could, of course, execute against commercial property other than a vessel or cargo which is the subject of a suit under section 1605(b), provided that the property was used in the same commercial activity upon which the maritime lien was based.

The language 'is or was used' in paragraph (2) contemplates a situation where property may be transferred from the commercial activity which is the subject of the suit in an effort to avoid the process of the court. This language, however, does not bear on the question of whether particular property is to be deemed property of the entity against which the judgment was obtained. The courts will have to determine whether property 'in the custody of' an agency or instrumentality is property 'of' the agency or instrumentality, whether property held by one agency should be deemed to be property of another, whether property held by an agency is property of the foreign state. See Prelude Corp. v. Owners of F/V Atlantic, 1971, A.M.C. 2651 (N.D. Calif); American Hawaiian Ventures v. M.V.J. Latuharhary, 257 F.Supp. 622, 626 (D.N.J. 1966).

Paragraph (3) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and which has been taken in violation of international law or has been exchanged for property taken in violation of international law. See the analysis to section 1605(a)(3).

***29 **6628** Paragraph (4) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and is either acquired by succession or gift or is immovable. Specifically exempted are diplomatic and consular missions and the residences of the chiefs of such missions. This exemption applies to all of the situations encompassed by sections 1610 (a) and (b); embassies and related buildings could not be deemed to be property used for a 'commercial' activity as required by section 1610(a); also, since such buildings are those of the foreign state itself, they could not be property of an agency or instrumentality engaged in a commercial activity in the United States within the meaning of section 1610 (b).

Paragraph (5) of section 1610(a) would deny immunity with respect to obligations owed to a foreign state under a policy of liability insurance. Such obligations would after judgment be treated as property of the foreign state subject to garnishment or related remedies in aid or in place of execution. The availability of such remedies would, of course, be governed by applicable State or Federal law. Paragraph (5) is intended to facilitate recovery by individuals who may be injured in accidents, including those involving vehicles operated by a foreign state or by its officials, or employees acting within the scope of their authority.

(b) Additional Execution Against Agencies and Instrumentalities Engaged in Commercial Activity in the United States.-- Section 1610 (b) provides for execution against the property of agencies or instrumentalities of a foreign state in circumstances additional to those provided in section 1610(a). However, the agency or instrumentality must be engaged in a commercial activity in the United States. If so, the plaintiff may obtain an attachment in aid of execution or execution against any property, commercial and noncommercial, of the agency or instrumentality, but only in the circumstances set forth in paragraphs (1) and (2).

Paragraph (1) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States, where the agency or instrumentality has waived its immunity from execution. See the analysis to paragraph (1) of section 1610(a).

Paragraph (2) of section 1610(b) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States in order to satisfy a judgment relating to a claim for which the agency or instrumentality is not immune by virtue of section 1605 (a)(2), (3) or (5), or 1605(b). Property will be subject to execution irrespective of whether the property was used for the same commercial or other activity upon which the claim giving rise to the judgment was based.

Section 1610(b) will not permit execution against the property of one agency or instrumentality to satisfy a judgment against another, unrelated agency or instrumentality. See Prelude Corp. v. Owners of F/V Atlantic, 1971 A.M.C. 2651 (N.D. Calif.). There are compelling reasons for this. If U.S. law did not respect the separate juridical identities of different agencies or instrumentalities, it might encourage foreign jurisdictions to disregard the juridical divisions between differ- ***30** ent ****6629** U.S. corporations or between a U.S. corporation and its independent subsidiary. However, a court might find that property held by one agency is really the property of another. See the analysis to section 1610(a)(2).

(c) Necessity of court order following reasonable notice.-- Section 1610(c) prohibits attachment or execution under sections 1610(a) a4d (b) unless the court has issued an order for such attachment and execution. In some jurisdictions in the United States, attachment and execution to satisfy a judgment may be had simply by applying to a clerk or to a local sheriff. This would not afford sufficient protection to a foreign state. This subsection contemplates that the courts will exercise their discretion in permitting execution. Prior to ordering attachment and execution, the court must determine that a reasonable period of time has elapsed following the entry of judgment, or in cases of a default judgment, since notice of the judgment was given to the foreign state under section 1608 (e). In determining whether the period has been reasonable, the courts should take into account procedures, including legislation, that may be necessary for payment of a judgment by a foreign state, which may take several months; representations by the foreign state of steps being taken to satisfy the judgment; or any steps being taken to satisfy the judgment; or evidence that the foreign state is about to remove assets from the jurisdiction to frustrate satisfaction of the judgment.

(d) Attachments upon explicit waiver to secure satisfaction of a judgment.-- Section 1610(d) relates to attachment against the property of a foreign state, or of a political subdivision, agency or instrumentality of a foreign state, prior to the entry of judgment or prior to the lapse of the 'reasonable period of time' required under section 1610(c). Immunity from attachment will be denied only if the foreign state, political subdivision, agency or instrumentality has explicitly waived its immunity from attachment prior to judgment, and only if the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state and not to secure jurisdiction. This subsection provides, in cases where there has been an explicit waiver, a provisional remedy, for example to prevent assets from being dissipated or removed from the jurisdiction in order to frustrate satisfaction of a judgment.

Section 1611. Certain types of property immune from execution

Section 1611 exempts certain types of property from the immunity provisions of section 1610 relating to attachment and execution.

(a) Property held by international organi7ations.-- Section 1611(a) precludes attachment and execution against funds and other property of certain international organizations. The purpose of this subsection is to permit international organizations designated by the President pursuant to the International Organizations Immunities Act, 22 U.S.C. 288, et seq., to carry out their functions from their offices located in the United States without hindrance by private claimants seeking to attach the payment of funds to a foreign state; such attachments would also violate the immunities accorded to such international institutions. See also article 9, section 3 of the Articles of Agreement of the International Monetary Fund, TIAS 1501, 60 Stat. 1401. International organizations covered

by this provision would include, ***31** ****6630** inter alia, the International Monetary Fund and the World Bank. The reference to 'international organizations' in this subsection is not intended to restrict any immunity accorded to such international organizations under any other law or international agreement.

(b) Central bank funds and military property.-- Section 1611(b)(1) provides for the immunity of central bank funds from attachment or execution. It applies to funds of a foreign central bank or monetary authority which are deposited in the United States and 'held' for the bank's or authority's 'own account'-- i.e., funds used or held in connection with central banking activities, as distinguished from funds used solely to finance the commercial transactions of other entities or of foreign states. If execution could be levied on such finds without an explicit waiver, deposit of foreign funds in the United States might be discouraged. Moreover, execution against the reserves of foreign states could cause significant foreign relations problems.

Section 1611(b)(2) provides immunity from attachment and execution for property which is, or is intended to be, used in connection with a military activity and which fulfills either of two conditions: the property is either (A) of a military character or (B) under the control of a military authority or defense agency. Under the first condition, property is of a military character if it consists of equipment in the broad sense-- such as weapons, ammunition, military transport, warships, tanks, communications equipment. Both the character and the function of the property must be military. The purpose of this condition is to avoid frustration of United States foreign policy in connection with purchases of military equipment and supplies in the United States by foreign governments.

The second condition is intended to protect other military property, such as food, clothing, fuel and office equipment which although not of a military character, is essential to military operations. 'Control' is intended to include authority over disposition and use in addition to physical control, and a 'defense agency' is intended to include civilian defense organizations comparable to the Defense Supply Agency in the United States. Each condition is subject to the overall condition that property will be immune only if its present or future use is military (e.g., surplus military equipment withdrawn from military use would not be immune). Both conditions will avoid the possibility that a foreign state might permit execution on military property of the United States abroad under a reciprocal application of the act.

SEC. 5. VENUE

This section amends 28 U.S.C. 1391, which deals with venue generally. Under the new subsection (f), there are four express provisions for venue in civil actions brought against foreign states, political subdivisions or their agencies or instrumentalities.

(1) The action may be brought in the judicial district wherein a substantial part of the events or omissions giving rise to the claim occurred.' This provision is analogous to 28 U.S.C. 1391(e), which allows an action against the United States to be brought, inter alia, in any judicial district in which 'the cause of action arose.' The test adopted, however, is the newer test recommended by the American Law Institute and incorporated in S. 1876, 92d Congress, 1st session, which ***32** ****6631** does not imply that there is only one such district applicable in each case. In cases under section 1605(a) (2), involving a commercial activity abroad that causes a direct effect in the United States, venue would exist wherever the direct effect generated 'a substantial part of the events' giving rise to the claim.

In cases where property or rights in property are involved, the action may be brought in the judicial district in which 'a substantial part of the property that is the subject of the action is situated.' No hardship will be caused to the foreign state if it is subject to suit where it has chosen to place the property that gives rise to the dispute.

(2) If the action is a suit in admiralty to enforce a maritime lien against a vessel or cargo of a foreign state, and if the action is brought under the new section 1605(b) in this bill, the action may be brought in the judicial district in which the vessel or cargo is situated at the time notice is delivered pursuant to section 1605(b)(1).

(3) If the action is brought against an agency or instrumentality of a foreign state, as defined in the new section 1603(b) in the bill, it may be brought in the judicial district where the agency or instrumentality is licensed to do business or is doing business. This provision is based on 28 U.S.C. 1391(c).

(4) If the action is brought against a foreign state or political subdivision, it may be brought in the U.S. District Court for the District of Columbia. It is in the District of Columbia that foreign states have diplomatic representatives and where it may be easiest for them to defend. New subsection (f) would, of course, not apply to entities that are owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). For purposes of this bill, such entities are not agencies or instrumentalities of a foreign State. (See the analysis to sec. 1603(b).)

As with other provisions in 28 U.S.C. 1391, venue in any court could be waived by a foreign state, such as by failing to object to improper venue in a timely manner. (See rule 12(h), F.R. Civ. P.)

SEC. 6. REMOVAL OF CASES FROM STATE COURTS

The bill adds a new provision to 28 U.S.C. 1441 to provide for removal to a Federal district court of civil actions brought in the courts of the States against a foreign state or a political subdivision, agency or instrumentality of a foreign state. In view of the potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area, it is important to give foreign states clear authority to remove to a Federal forum actions brought against them in the State courts. New subsection (d) of section 1441 permits the removal of any such action at the discretion of the foreign state, even if there are multiple defendants and some of these defendants desire not to remove the action or are citizens of the States in which the action has been brought.

As with other removal provisions, a petition for removal must be filed with the appropriate district court in a timely manner. (28 U.S.C. 1446.) However, in the view of the 60-day period provided in section 1608(c) in the bill ans in view of the bill's preference that actions involving foreign states be tired in federal courts, the time limitations for filing a petition of removal under 28 U.S.C. 1446 may be extended ‘at any time‘ for good cause shown.

***33** ****6632** Upon removal, the action would be heard and tried by the appropriate district court sitting without a jury. (Cf. 28 U.S.C. 2402, precluding jury trials in suits against the United States.) Thus, one effect of removing an action under the new section 1441(d) will be to extinguish a demand for a jury trial made in the state court. (Cf. rule 81(c), F.R. Civ. P.) Because the judicial power of the United States specifically encompasses actions ‘between a State, or the Citizens thereof, and foreign States‘ (U.S. Constitution, art. III, sec. 2, cl. 1), this preemption of State court procedures in cases involving foreign sovereigns is clearly constitutional.

This section, again, would not apply to entities owned by a foreign state which are citizens of a State of the United States as defined in 28 U.S.C. 1332(c) and (d), or created under the laws of a third country.

SEC. 7. SEVERABILITY OF PROVISIONS

This action provides that if a portion of the act or any application of the act should be found invalid for any reason, such invalidity would not affect any other provision or application of the act.

SEC. 8. EFFECTIVE DATE

This section establishes that the effective date of the act shall be 90 days after it becomes law. A 90-day period is deemed necessary in order to give adequate notice of the act and its detailed provisions to all foreign states.

STATEMENTS UNDER CLAUSE 2(1)(2)(B), CLAUSE 2(1)(3) AND CLAUSE 2(1)(4) OF RULE XI AND CLAUSE 7(a)(1) OF RULE XIII OF THE HOUSE OF REPRESENTATIVES

COMMITTEE VOTE

(RULE XI 2(a)(2)(B))

On September 9, 1976, the Full Committee on the Judiciary approved the bill H.R. 11315 by voice vote.

COST

(RULE XIII 7(a)(1))

The enactment of this bill will not require any new or additional authorization or appropriation of funds. Indeed, the enactment of the bill will result in a net saving, in an undetermined amount, in that the Department of State will no longer have to undertake a consideration of diplomatic requests for sovereign immunity, and the Department of Justice will not be required to appear in the courts in support of the suggestions of immunity that are filed pursuant to the Department of State's sovereign immunity determinations.

**6633 OVERSIGHT STATEMENT

(RULE XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility *34 with reference matters involving the immunity of foreign states, in accordance with Rule VI(b) of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that subcommittee and the committee has determined that legislation should be enacted as set forth in this bill

BUDGET STATEMENT

(RULE XI 2(1)(3)(B))

As has been indicated in the committee statement as to cost made pursuant to Rule XIII(7)(a)(1), the bill will not require any new or additional authorization or appropriation of funds. The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by Clause 2(1)(3)(B) of Rule XI.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(RULE XI 2(1)(3)(C))

The estimate received from the Director of the Congressional Budget Office is as follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 6, 1976.

Hon. PETER W. RODINO, Jr.

Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of June 10, 1976 and pursuant to section 403 of the Congressional Budget Act, the Congressional Budget Office has analyzed the costs associated with H.R. 11315, the 'Foreign Sovereign Immunities Act of 1976.' This legislation is estimated to have no budgetary impact.

Should the committee so desire, we would be pleased to provide additional assistance on this and future legislation.

Sincerely,

ALICE M. RIVLIN,
Director.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE ON GOVERNMENT OPERATIONS

(RULE XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1) (3) of House Rule XI.

****6634** INFLATIONARY IMPACT

(RULE XI 2(1)(3))

In compliance with clause 2(1)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

* * * *

***44** (The executive communication from the Departments of State and Justice is as follows:)

DEPARTMENT OF STATE,
Washington, D.C., October 31, 1975.

Hon. CARL O. ALBERT,

Speaker of the House of Representatives.

DEAR MR. SPEAKER: The Department of State and Department of Justice submit for your consideration and appropriate reference the ***45** enclosed draft bill, entitled 'To define the circumstances in which foreign states are immune from the jurisdiction of U.S. courts and in which execution may not be levied on their assets, and for other purposes.' This is a proposed revision of the draft bill which was submitted in a letter (enclosed) to you

dated January 16, 1973, and subsequently introduced by Chairman Peter W. Rodino, Jr., and Congressman Edward Hutchinson as H.R. 3493. A revised section-by-section analysis explaining the provisions of the bill in some detail is also enclosed. A hearing was held on H.R. 3493 before the Subcommittee on Claims and Governmental Relations of the Committee of the Judiciary in the House of Representatives in the 1st session of the 93d Congress on June 7, 1973.

The broad purposes of this legislation-- to facilitate and depoliticize litigation against foreign states and to minimize irritations in foreign relations arising out of such litigation-- remain the same. To this end the revised bill, like its predecessor, would entrust the resolution of questions of sovereign immunity to the judicial branch of Government. The statute would codify and refine the 'restrictive theory' of sovereign immunity which has guided United States practice with respect to jurisdiction originally set forth in the letter of May 19, 1952, from the Acting Legal Adviser, Jack B. Tate, to the Acting Attorney General, Philip B. Perlman. It would also replace the absolute immunity now accorded foreign states from execution of judgment with an immunity from execution conforming more closely to the restrictive theory of immunity from jurisdiction. The measure also includes provisions for service of process, venue, and jurisdiction in cases against foreign states which would make it unnecessary to attach the assets of foreign states for purposes of jurisdiction.

Numerous technical changes have been made in the bill on the basis of the hearing in the House of Representatives, commentaries in a number of legal journals, and extensive discussions which have been held with members of the bar as well as the reports and recommendations of committees of several bar associations. A number of these technical revisions are important, but none of them alters the basic concept of the legislation as originally submitted.

****6635** The most important changes include (1) further definition of 'commercial activity carried on in the United States by a foreign state' and 'public debt' in section 1603; (2) clarification of the limitations of immunity in tort actions (sec. 1605(5)), in respect of counterclaims (sec. 1607), and in case of execution of judgment (sec. 1610); and (3) substantial revision of section 1608 relating to service of process to conform with article XXII of the Convention on Diplomatic Relations, signed at Vienna April 18, 1961, and with the Federal Rules of Civil Procedure.

In addition, important new provisions have been added to preserve the jurisdiction of the courts of the United States in cases in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of a foreign state (sec. 1605(b)), and to avoid interference with disbursements to foreign states by certain international organizations located in the United States (sec. 1611(a)). These and other changes are discussed in the enclosed analysis.

The Departments of State and Justice believe that this revised draft bill is worthy of and will receive the support of the bar and would ***46** welcome hearings before the appropriate committees of the House to consider this measure as soon as possible.

The Office of Management and Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the administration's program.

Sincerely,

ROBERT S. INGERSOLL,
Deputy Secretary of State.
HAROLD R. TYLER, Jr.,
Deputy Attorney General.

* * * *

1 63 S.Ct. 793, 87 L.Ed. 1014.

2 65 S.Ct. 530, 89 LEd. 729.

3 63 S.Ct. 793, 87 L.Ed. 1014.

4 75 S.Ct. 423, 99 L.Ed. 389, rehearing denied 75 S.Ct. 598, 349 U.S. 913, 99 L.Ed. 1247.

5 84 S.Ct. 923, 11 L.Ed.2d 804.

6 66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057.

7 78 S.Ct. 199, 2 L.Ed.2d 223.

8 33 S.Ct. 443, 57 L.Ed. 742.

9 89 S.Ct. 872, 21 L.Ed.2d 784.

10 The committee has been advised that in some cases, after the defense of sovereign immunity has been denied or removed as an issue, the art of state doctrine may be improperly asserted in an effort to block litigation. Under the act of state doctrine, United States Courts may refuse to adjudicate the validity of purely public acts of foreign sovereigns, as distinguished from commercial acts, committed and effective within their own territory. For example, in the Supreme Court's recent decision in Dunhill v. Republic of Cuba, 44 U.S.L.W. 4665. No. 73-1288 (May 24, 1976, the respondent having brought suit (and thus clearly having waived the defense of sovereign immunity) attempted to assert that a refusal to pay a commercial obligation was not reviewable because it was an 'act of state'.

The committee has found it unnecessary to address the act of state doctrine in this legislation since decisions such as that in the Dunhill case demonstrate that our courts already have considerable guidance enabling them to reject improper assertions of the act of state doctrine. For example, it appears that the doctrine would not apply to the cases covered by H.R. 11315, whose touchstone is a concept of 'commercial activity' involving significant jurisdictional contacts with this country. The conclusions of the committee are in concurrence with the position of the government in its amicus brief to the Supreme Court in the Dunhill case where the Solicitor General stated:

'(U)nder the modern restrictive theory of sovereign immunity, a foreign state is not immune from suit on its commercial obligations. To elevate the foreign state's commercial acts to the protected status of 'acts of state' would frustrate this modern development by permitting sovereign immunity to reenter through the back door, under the guise of the act of state doctrine. ' (Amicus Brief of United States, p. 41.)

11 e.g. 5 U.S.C. 552 concerning public information.

12 96 S.Ct. 1854, 48 L.Ed.2d 301.

13 75 S.Ct. 423, 99 L.Ed. 389, rehearing denied 75 S.Ct. 598, 349 U.S. 913, 99 L.Ed. 1247.

14 Cf. Statement in the analysis of section 1606 noting that appropriate remedies would be available under Rule 37, F.R. Civ. P., for an unjustifiable failure to make discovery.

(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****. 2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. REP. 94-1487, H.R. Rep. No. 1487, 94TH Cong., 2ND Sess. 1976, 1976 U.S.C.C.A.N. 6604, 1976 WL 14078 (Leg.Hist.)

Annex 5

U.S. Congressional Record – Senate, Vol. 151, part 9, 16 June 2005

UNITED STATES  OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE *109th* CONGRESS

FIRST SESSION

VOLUME 151—PART 9

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SENATE—*Thursday, June 16, 2005*

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, the Reverend Dr. Therman E. Evans of Morning Star Community Christian Center in Linden, NJ.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

God, You are the one who created the universe. You are the one who established the life-sustaining ecological order of nature and the life being biological order of humans. You are the one who provides for all—the Sun, the soil, the atmosphere, the water, and the nourishment that results therefrom. And for all of this we say, "Thank You."

You save us from destruction. You support us through difficulty. You sustain us to meet challenges. You strengthen us where we are weak. You steady us when we are shaky. You shake us when we need to be awakened. You stimulate us when we need to be active. And for all of this we say, "Thank You."

Bless now, in a special way and inspire as never before, these our political leaders. Give them Your wisdom, Your peace, Your humility, Your kindness, Your love, Your righteousness, and Your faith as they continue to do the work they have been called to do. And for this opportunity You have given them to bless this wonderful Nation, we say, "Thank You and amen."

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 16, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I yield to the Senator from New Jersey to speak for a moment at this time.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

THE GUEST CHAPLAIN

Mr. CORZINE. Mr. President, I thank the distinguished Senator from New Mexico for this courtesy.

I am extraordinarily proud to have the friendship, the moral support, and the leadership of Dr. Therman Evans, who opened our session today with a prayer. This is an individual who is a true man for all seasons—a physician, a minister, an entrepreneur, a chief of a village in Ghana—an extraordinary man who is leading his flock and ministering in a ministry of wholeness, one that deals with the complete aspect of a human being's life and sets a tone and a message for the community in Linden, NJ, and much more broadly across New Jersey and Pennsylvania. He is truly a unique and wonderful individual. We welcome him.

I am truly honored to call Dr. Therman Evans my friend.

I yield the floor.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

LESSENING DEPENDENCE ON FOREIGN OIL

Mr. REID. Mr. President, first, I rise to express my appreciation to Senator CANTWELL for the issue she has brought before the Senate. I am so convinced that the 40 percent can be met in 20 years. When President Kennedy said, We need to go to the Moon, he did not set a formula how we would get to the Moon, but we got to the Moon. When we were in the depths of our Depression in 1932, President Roosevelt said, We need to get out of this. We went a number of steps forward, some steps back, but we were able to work our way out of the Great Depression.

Senator CANTWELL's amendment is visionary. I really do believe that we can do this. I know there are people concerned, well, does this mean CAFE standards? Does this mean we are going to go totally to biomass? Are we going to do it all with alternative energy? I do not know, but the great genius of America can figure out a way to do this.

We need to lessen our dependence on foreign oil. There is no question about that. Fifty-eight percent of the oil we use comes from foreign countries. Listening to the news this morning, the stock market just moved a little bit yesterday. Why did it not move more? Because the price of oil went up almost a dollar a barrel. We have to do better than that. The only way we can do it is to lessen our dependence on foreign oil.

Unless we have a directive of this President and Presidents that follow him to meet this goal, we will continue to be dependent on foreign oil.

So I am totally impressed with the Senator from Washington and the great work she has done on this amendment. I hope it passes by a large margin.

FUNERAL OF FORMER SENATOR EXON

Mr. REID. Mr. President, the time I have is leader time, and I wanted to say a few things. I was not here yesterday afternoon because of the funeral of Senator Exon. I say to my colleagues, those of us who went to that funeral were so impressed with what this man did for the State of Nebraska. For the first time in the history of Nebraska, a funeral was held in the State capitol. Why? Because Jim Exon made a difference in the State of Nebraska. I am sure all 100 Senators, as I have, ask are we making a difference in what happens in our States, in our country. The lesson we can look to is Jim Exon, a man with not a great education by

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(c) REMEDIES.—If the district court determines that a violation has occurred, the court may order the owner or operator of a railroad that committed the violation to—

(1) reinstate the employee to the employee's former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION.—The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

SEC. 7. PENALTIES.

(a) RIGHT OF ACTION.—

(1) IN GENERAL.—Any State or local government may bring a civil action in a United States district court for redress of injuries caused by a violation of this Act against any person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials by rail and who violated this Act.

(2) RELIEF.—In an action under paragraph (1), a State or local government may seek, for each violation of this Act—

(A) an order for injunctive relief; and

(B) a civil penalty of not more than $1,000,000.

(b) ADMINISTRATIVE PENALTIES.—

(1) IN GENERAL.—The Secretary may issue an order imposing an administrative penalty of not more than $1,000,000 for each failure by a person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials to comply with this Act.

(2) NOTICE AND HEARING.—Before issuing an order under paragraph (1), the Secretary shall provide the person who allegedly violated this Act—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the person received the notice, a hearing on the proposed order.

(3) PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations establishing procedures for administrative hearings and the appropriate review of penalties issued under this subsection, including establishing deadlines.

By Mr. SPECTER (for himself and Mr. LAUTENBERG):

S. 1257. A bill to amend title 28, United States Code, to clarify that persons may bring private rights of actions against foreign states for certain terrorist acts, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, along with my colleague, Senator LAUTENBERG, I am introducing the Justice for Marine Corps Families—Victims of Terrorism Act. I am submitting this legislation on behalf of the families of the brave servicemen who died when terrorists—with the support of the Government of Iran—sent a suicide bomber into the Marine Corps Barracks in Beirut, Lebanon, on October 23, 1983, killing 241 U.S. servicemen—18 sailors, 3 soldiers, and 220 marines.

This legislation clarifies a private right of action, in Federal courts, for U.S. citizens against state sponsors of terrorism and will ultimately make it easier for victims of such acts to collect court-ordered damages against state-sponsors of terrorism. The specific provisions of the legislation have been drafted to harmonize existing statutory law with the recent decision by the District of Columbia circuit in *Cicippio-Puleo* v. *Islamic Republic of Iran*, 353 F.3d 1024, D.C. Cir. 2004, which held that "neither 28 U.S.C. §1605(a)(7) nor the Flatow Amendment to the Foreign Sovereign Immunities Act. . . ., nor the two considered in tandem, creates a private right of action against a foreign government." 353 F.3d 1024, 1032–33 (D.C. Cir. 2004). This bill will permit the families of the brave servicemen who died at the Marine Corps Barracks in Beirut, Lebanon, to collect court-ordered damages against state-sponsors of terrorism such as Iran.

The initial section of the bill clarifies that victims of a state-sponsored terrorist attack are permitted to bring a private suit against the sponsoring foreign terrorist government. Congress first allowed U.S. citizen victims of state sponsored terrorism to pursue private actions against a foreign terrorist government when we passed the Flatow Amendment in 1996. Now, some 9 years and over 50 successful cases later, the Federal Appellate Court for the District of Columbia Circuit in *Cicippio-Puleo* v. *Islamic Republic of Iran*, 353 F.3d 1024 D.C., 2004, has held that the Flatow amendment did not create a private right of action against a foreign terrorist government. Accordingly, the initial section of this bill will correct *Cicippio-Puleo* by explicitly inserting language into the Flatow amendment enabling U.S. citizens to once again bring private suits against foreign terrorist governments who have murdered or maimed their loved ones.

The second section of the bill eliminating many of the barriers which have prevented U.S. citizens from collecting on court ordered damages against state sponsors of terrorism. The bill does this by changing the legal standard of the Bancec doctrine from day to day-managerial control to those under the beneficial ownership of the state. The Supreme Court enunciated the so-called *Bancec* doctrine in *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626–27, 1983. In this case, the U.S. Supreme Court created a presumption against a party that seeks to satisfy an outstanding judgment against a foreign government by seizing the foreign government's assets. This section of the bill will ease the burden on the families of victims of terrorism by permitting them to attach the hidden assets of terrorist states held within the United States. Finally, the remaining portions of the bill would create a mechanism whereby a lien could be filed in any jurisdiction in the United States where a state sponsor of terrorism directly or indirectly owns assets. This would prevent foreign state sponsors of terrorism from removing these assets from the country after the passage of this legislation.

On October 23, 2004, in Philadelphia, I was privileged to take part in a memorial service held in honor of the servicemen killed in the 1983 Beirut attack. Some of the family members of those killed attended the event. Their moving comments about how they had been denied the ability to seek legal redress, despite clear findings implicating Iran in the attacks, were both poignant and persuasive. It is vitally important to victims' families that they have a private right of action against the state sponsor itself, not just against its officials, employees, or agents acting in their official capacity. These victims and their families deserve not only a day in court but also the ability to recover damages from these terrorist states that commit, direct, or materially support terrorist acts against American citizens or nationals. This bill reaffirms that the United States will not tolerate state-sponsored terrorism. Accordingly, I urge my colleagues to join us in support of this bill. I yield the floor. I ask unaminous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF PRIVATE RIGHT OF ACTION AGAINST TERRORIST STATES; DAMAGES.

(a) RIGHT OF ACTION.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (f), in the first sentence, by inserting "or (h)" after "subsection (a)(7)"; and

(2) by adding at the end the following:

"(h) CERTAIN ACTIONS AGAINST FOREIGN STATES OR OFFICIALS, EMPLOYEES, OR AGENTS OF FOREIGN STATES.—

"(1) CAUSE OF ACTION.—

"(A) CAUSE OF ACTION.—A foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or an official, employee, or agent of such a foreign state, shall be liable to a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or the national's legal representative for personal injury or death caused by an act of that foreign state, or by that official, employee, or agent while acting within the scope of his or her office, employment, or

agency, for which the courts of the United States may maintain jurisdiction under subsection (a)(7) for money damages. The removal of a foreign state from designation as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or other provision of law shall not terminate a cause of action arising under this subparagraph during the period of such designation.

"(B) DISCOVERY.—The provisions of subsection (g) apply to actions brought under subparagraph (A).

"(C) NATIONALITY OF CLAIMANT.—No action shall be maintained under subparagraph (A) arising from an act of a foreign state or an official, employee, or agent of a foreign state if neither the claimant nor the victim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) when such acts occurred.

"(2) DAMAGES.—In an action brought under paragraph (1) against a foreign state or an official, employee, or agent of a foreign state, the foreign state, official, employee, or agent, as the case may be, may be held liable for money damages in such action, which may include economic damages, damages for pain and suffering, or, notwithstanding section 1606, punitive damages. In all actions brought under paragraph (1), a foreign state shall be vicariously liable for the actions of its officials, employees, or agents.

"(3) APPEALS.—An appeal in the courts of the United States in an action brought under paragraph (1) may be made—

"(A) only from a final decision under section 1291 of this title, and then only if filed with the clerk of the district court within 30 days after the entry of such final decision; and

"(B) in the case of an appeal from an order denying the immunity of a foreign state, a political subdivision thereof, or an agency of instrumentality of a foreign state, only if filed under section 1292 of this title.".

(b) CONFORMING AMENDMENT.—Section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as contained in section 101(a) of Division A of Public Law 104-208 (110 Stat. 3009-172; 28 U.S.C. 1605 note), is repealed.

SEC. 2. PROPERTY SUBJECT TO ATTACHMENT EXECUTION.

Section 1610 of title 28, United States Code, is amended by adding at the end the following:

"(g) PROPERTY INTERESTS IN CERTAIN ACTIONS.—

"(1) IN GENERAL.—A property interest of a foreign state, or agency or instrumentality of a foreign state, against which a judgment is entered under subsection (a)(7) or (h) of section 1605, including a property interest that is a separate juridical entity, is subject to execution upon that judgment as provided in this section, regardless of—

"(A) the level of economic control over the property interest by the government of the foreign state;

"(B) whether the profits of the property interest go to that government;

"(C) the degree to which officials of that government manage the property interest or otherwise control its daily affairs;

"(D) whether that government is the real beneficiary of the conduct of the property interest; or

"(E) whether establishing the property interest as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

"(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property interest of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from execution upon a judgment entered under subsection (a)(7) or (h) of section 1605 because the property interest is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.".

SEC. 3. APPOINTMENT OF SPECIAL MASTERS.

(a) VICTIMS OF CRIME ACT.—Section 1404C(a)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603c(a)(3)) is amended by striking "December 21, 1988, with respect to which an investigation or" and inserting "October 23, 1983, with respect to which an investigation or a civil or criminal".

(b) JUSTICE FOR MARINES.—The Attorney General shall transfer, from funds available for the program under sections 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States District Court for the District of Columbia such funds as may be required to carry out the orders of United States District Judge Royce C. Lamberth appointing Special Masters in the matter of Peterson, et al. v. The Islamic Republic of Iran, Case No. 01CV02094 (RCL).

SEC. 4. LIS PENDENS.

(a) LIENS.—In every action filed in a United States district court in which jurisdiction is alleged under subsection (a)(7) or (h) of section 1605 of title 28, United States Code, the filing of a notice of pending action pursuant to such subsection, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property located within that judicial district that is titled in the name of any defendant, or titled in the name of any entity controlled by any such defendant if such notice contains a statement listing those controlled entities. A notice of pending action pursuant to subsection (a)(7) or (h) of section 1605 of title 28, United States Code, shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(b) ENFORCEMENT.—Liens established by reason of subsection (a) shall be enforceable as provided in chapter 111 of title 28, United States Code.

SEC. 5. APPLICABILITY.

(a) IN GENERAL.—The amendments made by this Act apply to any claim for which a foreign state is not immune under subsection (a)(7) or (h) of section 1605 of title 28, United States Code, arising before, on, or after the date of the enactment of this Act.

(b) PRIOR CAUSES OF ACTION.—In the case of any action that—

(1) was brought in a timely manner but was dismissed before the enactment of this Act for failure to state of cause of action, and

(2) would be cognizable by reason of the amendments made by this Act, the 10-year limitation period provided under section 1605(f) of title 28, United States Code, shall be tolled during the period beginning on the date on which the action was first brought and ending 60 days after the date of the enactment of this Act.

By Mr. CHAMBLISS:

S. 1258. A bill to designate the building located at 493 Auburn Avenue, N.E., in Atlanta, Georgia, as the "John Lewis Civil Rights Institute"; to the Committee on Environment and Public Works.

Mr. CHAMBLISS. Mr. President, I rise today to honor a man who has been at the front of our country's fight for civil rights. Born a son of sharecroppers in Troy, AL, JOHN grew up to become one of the leading proponents fighting on the frontlines of the civil rights movement.

JOHN grew up listening to speeches from the Reverend Martin Luther King Jr., and observing many courageous acts, such as the Montgomery bus boycotts. Through those examples, LEWIS could no longer stand idly by while others suffered for his sake. He was motivated to become an active participant in these historical events. From organizing peaceful demonstrations, to riding in the fronts of buses, LEWIS was a key leader and played a dynamic role in the civil rights movement.

From 1963–1966 LEWIS served as chairman of the Student Nonviolent Coordinating Committee. In 1963 LEWIS was named one of the Big Six Civil Rights leaders along with Martin Luther King Jr., James Farmer, Roy Wilkins, Whitney Young, and A. Phillip Randolph.

In August 1963, JOHN LEWIS was a keynote speaker at the momentous March on Washington where Martin Luther King, Jr. gave his "I Have a Dream" speech. On March 7, 1965, LEWIS helped the now pivotal voting rights march from Selma to Montgomery, AL. Sustaining physical injuries for the principles he believed in, JOHN LEWIS remained steadfast in his commitment to promoting human rights in the United States. The violent reactions by Alabama state troopers that day sparked an outcry and eventually served to facilitate passage of the Voting Rights Act of 1965.

Mr. President, as a congressman, statesman, humanitarian, the Nation has benefited greatly from the lifelong contributions of JOHN LEWIS. I am proud to introduce legislation honoring JOHN LEWIS.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1258

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JOHN LEWIS CIVIL RIGHTS INSTITUTE.

(a) DESIGNATION.—The building located at 493 Auburn Avenue, N.E., in Atlanta, Georgia, shall be known and designated as the "John Lewis Civil Rights Institute".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in subsection (a) shall be deemed

Annex 6

Oversight of the Trump Administration's Iran Policy, Hearing before the Subcommittee on the Middle East, North Africa, and International Terrorism of the Committee on Foreign Affairs, House of Representatives, One Hundred and Sixteenth Congress, First Session, 19 June 2019, Serial No. 116-48

- OVERSIGHT OF THE TRUMP ADMINISTRATION'S IRAN POLICY

[House Hearing, 116 Congress]
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OVERSIGHT OF THE TRUMP ADMINISTRATION'S IRAN POLICY

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HEARING

BEFORE THE

SUBCOMMITTEE ON
THE MIDDLE EAST, NORTH AFRICA, AND INTERNATIONAL TERRORISM

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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June 19, 2019

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C O N T E N T S

OVERSIGHT OF THE TRUMP ADMINISTRATION'S

IRAN POLICY

Wednesday, June 19, 2019

House of Representatives

Subcommittee on the Middle East,

North Africa, and International

Terrorism

Committee on Foreign Affairs

Washington, DC

The committee met, pursuant to notice, at 12:04 p.m., in room 2172 Rayburn House Office Building, Hon. Theodore E. Deutch (chairman of the subcommittee) presiding.

Mr. Deutch. This hearing will come to order. Welcome, everyone. The subcommittee is meeting today to hear testimony on the Trump Administration's Iran policy. I thank the witness for appearing today. I now recognize myself for the purpose of making an opening statement. I will then turn it over to the ranking member, Mr. Wilson, for his opening statement.

And, without objection, all members may have 5 days to submit statements, questions, and extraneous materials for the record, subject to the length limitations in the rules.

Mr. Hook, thank you very much for testifying today. This committee has many questions related to the U.S. policy toward Iran, and we welcome the opportunity to hear directly from the Administration.

In recent weeks, relations between the United States and Iran have grown increasingly tense. This committee is fully aware of the many challenges posed by Tehran. Iran plays a destabilizing role in the region by propping up Bashar al-Assad in Syria, supporting Houthi rebels in Yemen, threatening our ally, Israel, and supporting terrorist groups like Hezbollah and Hamas.

Iran also continues to unjustly imprison American citizens including Siamak Namazi and his father Baquer, who is, I would point out, 83 years old and in poor medical condition; Xiyue Wang whose health is deteriorating rapidly; and Bob Levinson, my constituent, who went missing in Iran in March 2007, and is now the longest-held American hostage. To this day, Iranian leaders refuse to acknowledge their responsibility for Bob's disappearance and have not fulfilled promises of assistance in locating and returning Bob to his family.

Congress stands in solidarity with those Americans and others detained in Iran. The Iranian Government's behavior is appalling and my colleagues and I unequivocally condemn its dangerous actions. This committee also has serious concerns, however, about the Administration's Iran policy, its execution, and its unintended consequences. I have four primary worries about the Administration's policy and I question its coherence, its impact on our international leadership, its effectiveness, and, at times, its recklessness.

First, the objectives of the Administration's policy are incoherent. Today, Mr. Hook, I understand you will say the Administration seeks new negotiations with Tehran based on four pillars: Iran's nuclear program, its expansive ballistic missile capabilities, its support of regional proxies, and its

arbitrary detention of U.S. citizens. These objectives are laudatory and worth pursuing.

But on multiple occasions, senior administration officials have expressed aims that are incompatible and sometimes work at cross-purposes with these goals. National Security Advisor John Bolton is a longtime proponent of regime change in Tehran. He continually questions the utility of negotiating with Iran and frequently indicates that the Iranian regime will not be in power in the coming years.

President Trump, regularly, including on a recent visit to Japan, said he is opposed to regime change. He has offered to negotiate with Iran without preconditions and claims that he seeks a deal solely to end Iran's nuclear program. But in a May 2018 speech, the Secretary of State, Mike Pompeo, outlined 12 conditions that Tehran must fulfill, many of which are unrelated to the nuclear issue. So, therefore, there is serious confusion about the intentions of Iran policy and whether Mr. Bolton, President Trump, and Secretary Pompeo are working at cross-purposes or even to achieve the same objectives.

Second, the Trump Administration's impulsive actions are isolating the United States from our allies, which makes it harder to counter Iran's nuclear and non-nuclear behavior. President Trump's withdrawal from the nuclear deal known as the JCPOA undermined U.S. credibility, undercut American leadership, and divided us from our allies. Now I am no great defender of the JCPOA, but the agreement formalized international dialog to address any Iranian violations or flaws in the accord, and by withdrawing the Trump Administration forfeited these mechanisms and frustrated global efforts to contain the Iranian nuclear threat. Furthermore, Iran recently announced that it would increase its stockpile of enriched uranium. Rather than confronting Iranian violations or addressing gaps and sunset concerns in the deal in concert with our allies and partners during negotiations, we instead face the challenge now with a fractured international community. Those divisions also make it harder to rally our allies to address Iran's non-nuclear activities like its ballistic missile program and destabilizing regional activities.

The fact became apparent in recent days. It is highly likely that Iran twice attacked civilian ships in the Gulf over the last month, but Congress would like to see that evidence before stating it as a fact, but these attacks are unacceptable and should unite the international community.

However, as the Administration sought to build a broad coalition to respond, close allies like Germany and Japan responded with skepticism while adversaries like Russia and China signaled their support for Iran and stated that they would continue to develop ties with the Islamic Republic. Rather than lead a unified international response to an attack on global commerce, the Trump Administration is having trouble convincing even our closest allies to push back on Iran.

Third, despite the Administration's claims, maximum pressure policy is ineffective by the Administration's own standards: deterring Tehran and countering further Iranian nuclear development. Those are the standards and we have not seen success. The approach appears based on this assumption: that faced with massive sanctions Tehran would capitulate, change its policies, and accede U.S. demands; in fact, the opposite has occurred as Iran escalated its regional and nuclear activities and rejected new negotiations.

Sanctions have not compelled Iran to change its regional policies, which is not only my opinion but the assessment of the head of Israeli military intelligence who made that claim several weeks back.

Fourth, it appears there is no process in place to reassess the assumptions underlying the Administration's policy, consider alternatives, and change course. If the current trend continues, the Trump Administration is likely to find a binary choice, back down in the face of Iran's aggressive behavior, or engage in military action.

And rather than force Iran back to the negotiating table, the Administration's policy is increasing the chances of miscalculation, which then would bring the United States and Iran closer to a military conflict. And even more troubling, the Administration seems to be suggesting that military action

is covered by the 2001 AUMF, which I remind the Administration there is broad bipartisan agreement that that is not the case.

To reiterate, Congress has not authorized war with Iran. Mr. Hook, I hope you will clarify the Administration's view on this issue. And, finally, I would just close by pointing out that the challenges posed by Iran are too grave, the risk to our international alliances too important, and the lives of our service members too sacred for Congress to abdicate its oversight responsibility and endorse a policy that we do not understand, that confuses our allies, and most importantly that risks U.S. national security.

And with that I will turn it over to the ranking member, Mr. Wilson.

Mr. Wilson. Thank you, Chairman Deutch, for calling this timely hearing. I am grateful that we will be joined later today by the Republican leader, Mike McCaul. His presence underscores how important the hearing is today. And thank you to our distinguished witness, Mr. Brian Hook, the U.S. Special Representative for Iran, for your testimony before this subcommittee today.

Iran has been a persistent threat to the United States since the Islamic Revolution of 1979. The Iranian regime is inherently hostile to the United States, and when the mullahs and Tehran chant ``Death to America,'' ``Death to Israel,'' they mean what they say and they publish it on billboards in English across the country, the same chant of ``Death to America,'' ``Death to Israel.'' The Iranian regime's hostilities to the United States, our interests, and allies around the world has continued unabated since 1979.

Its most recent iteration came in the form of Iran's attack on oil tankers in the Gulf of Oman this past weekend. This latest attack like all other Iranian attacks was not the result of any one policy or another. United States policy did not cause Iran to become the world's No. 1 State sponsor of terrorism, Iran has been engaged in this kind of behavior since the current regime in Tehran came to power.

This kind of behavior is not an aberration or escalation, it is a hallmark of the Iranian regime statecraft. The notion that the Iranian regime somehow would moderate to a point in which it would no longer support such malign activity has proven false. When Iran finally felt the economic benefits of sanctions relief under the terms of the flawed nuclear agreement, did it cut back its support to the malign activity around the world? No. Instead, Iran doubled down on support of terrorist groups and continued racing ahead in developing the ballistic missile program.

It exploited the breathing room paid for by the international community to prop up the Assad regime in Syria and increase its influence in places like Yemen and Iraq. That is part of the reason that the Trump Administration withdrew from the nuclear agreement and reimposed sanctions on the Iranian regime. Initially, the Iranians believed that they could wait out the Administration's maximum pressure campaign by appealing to the Europeans to try to find a way around U.S. sanctions, but they have not succeeded.

Iran's economy is spiraling, contracting at a rate of 6 percent so far this year after contracting nearly 4 percent in 2018. Feeling the squeeze, the Iranian regime has decided to revert to its tried and tested terrorist behavior with the latest attack in the Gulf and its announcement this week of its intention to breach the nuclear deal.

These are both tactics of desperation designed to give wind to arguments that U.S. policy precipitated the Iranian bad behavior. The sanctions against Iran are working. We have already seen some dividends of the Administration's maximum pressure campaign. Reports indicate that Iran has had to slash payments to the fighters in Syria by a third due to the pain of American sanctions. Even employees of Hezbollah have missed paychecks and lost perks.

Iran's cyber units also lost substantial funding, and the IRGC's Quds Force budget has been reportedly cut by 17 percent. At the same time, the United States must prioritize bringing our friends and partners into the fight with us. We cannot and should not do this alone. After all, it was the international sanctions regime against Iran that finally brought the regime

to the negotiating table, and we must bridge the divide with our European allies to be fully effective. We must restore deterrence against Iran and that requires the cooperation of our friends and allies in the region and beyond.

Mr. Hook, thank you again for your being here today. We look forward to your service and understand that you have really got a job ahead of you. But your background indicates that you can achieve.

Mr. Chairman, I yield back.

Mr. Deutch. I thank the ranking member. I will now introduce our witness, Mr. Brian Hook. Mr. Hook currently serves as U.S. Special Representative for Iran and Senior Policy Advisor to the Secretary of State. Prior to this appointment, he served as Director of the Policy Planning Staff from 2017 to 2018.

He previously held numerous senior roles in the Bush Administration including Assistant Secretary of State for International Organizations and Senior Advisor to the U.S. Ambassador to the U.N. Mr. Hook managed an international strategic consulting firm from 2009 to 2017, and practiced law at Hogan & Hartson from 1999 to 2003.

We thank you for being here today, Mr. Hook. I would ask you to please summarize your testimony in 5 minutes and, without objection, your prepared written statement will be made part of the hearing record.

Mr. Hook.

STATEMENT OF BRIAN HOOK, U.S. SPECIAL REPRESENTATIVE FOR IRAN AND SENIOR POLICY ADVISOR TO THE SECRETARY OF STATE

Mr. Hook. Thank you, Mr. Chairman, Ranking Member Wilson, and distinguished members of the subcommittee. I appreciate you inviting me today to testify before the committee and for devoting a hearing to discuss America's foreign policy to Iran.

In my role as the United States Special Representative for Iran, I have made it a priority to stay coordinated with this committee. This administration has implemented an unprecedented pressure campaign with two primary objectives: First, to deprive the Iranian regime of the money it needs to support its destabilizing activities. Second, to bring Iran back to the negotiating table to conclude a comprehensive and enduring deal as outlined by Secretary Pompeo in May 2018 shortly after the President left the Iran deal.

President Trump and Secretary Pompeo have expressed very clearly our willingness to negotiate with Iran when the time is right. No one should be uncertain about our desire for peace or our readiness to normalize relations should we reach a comprehensive deal. We have put the possibility of a much brighter future on the table for the Iranian people, and we mean it.

The comprehensive deal we seek with the Iranian regime should address four key areas: its nuclear program, its ballistic missile development and proliferation, its lethal support and financial support to terrorist groups and proxies, and its arbitrary detention of U.S. citizens, including as Chairman Deutch pointed out, Bob Levinson, who is your constituent, as well as Siamak Namazi and Xiyue Wang and others.

Over a year ago, Secretary Pompeo laid out 12 demands describing the negotiated outcomes that we seek. We did not invent this list. In fact, the requirements that the Secretary laid out simply reflect the wide extent of Iran's malign behavior as well as the global consensus that is reflected in multiple U.N. Security Council resolutions that were passed from 2006 up until around 2011.

Before we reimposed our sanctions and accelerated our pressure, Iran was increasing the scope of its malign activity. It was emboldened by the resources and legitimacy that the nuclear deal granted. This includes engaging in expansive missile testing and proliferation. Activities that I can confirm did not diminish after implementation of the nuclear deal in 2016.

And Iran also continued after the deal to detain innocent American citizens. Iran also deepened its engagement in regional conflicts, intensifying, prolonging, and deepening the

conflicts. In Yemen, for example, Iran helped to fuel a humanitarian catastrophe by providing funding, weapons, and training to the Houthis. Its support has only prolonged the suffering of the Yemeni people.

Looking at Syria, Iran supported Assad's war machine as the Syrian regime killed hundreds of thousands and displaced millions, creating the worst refugee crisis since World War II. Under the cover of the Syrian civil war, Iran is now trying to plant deep military roots in Syria and to establish Syria as a forward-deployed missile base to threaten Syria's neighbors, especially Israel.

In Lebanon, Iran uses Hezbollah for many decades to promote conflict with Lebanon's neighbors, threaten the safety of the Lebanese people, and imperil prospects for stability. Our pressure is aimed at reversing these trends. Today, by nearly every metric, the regime and its proxies are weaker than when our pressure began. Shia militant groups in Syria have stated that Iran no longer has enough money to pay them as much as they have in the past.

Hezbollah and Hamas have enacted unprecedented austerity plans due to a lack of funding from Iran. In March, Hezbollah's leader, Hassan Nasrallah, went on TV and made a public appeal for donations. Hezbollah has placed piggy banks in grocery stores and in retail outlets seeking the spare change of people.

We are also making it harder for Iran to expand its own military capabilities. Beginning in 2014 when the deal was near completion, Iran's military budget increased every year through 2017. When we put our pressure into effect starting in 2017 and 2018, in the first year we saw a reduction in Iran's military spending by 10 percent. And in March, their most recent budget has a 28 percent cut in defense spending and that includes a 17 percent cut for IRGC funding.

The IRGC cyber command is now low on funding and the IRGC has told Iraq's Shia militia groups that they need to start looking for new sources of revenue. Our pressure campaign is working. It is making Iran's violent and expansionist foreign policy cost-prohibitive. And I would say that our policy at its core is an economic and diplomatic one, but Iran has not responded to this in a diplomatic fashion. It has responded to it with violence and we very much believe that Iran should meet diplomacy with diplomacy, not with terror, bloodshed, and extortion. Our diplomacy, our economic pressure and diplomatic isolation do not entitle Iran to undertake violence against any nation or to threaten maritime security.

Happy to wrap it up there unless you would like me to finish. I want to be respectful of the time limit.

[The prepared statement of Mr. Hook follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Deutch. Thank you, Mr. Hook. We appreciate your yielding back and appreciate your testimony. I will start the questions.

Mr. Hook, the Iraq War was not that long ago. I was not in Congress when the Bush Administration was making its claims about weapons of mass destruction. Many of us were not there then, but John Bolton was. As Undersecretary of State for Arms Control, Bolton made misleading or false statements about biological weapons in Cuba, weapons in Syria, and of course about Iraq's development and stockpile of WMDs.

Before entering the White House, he advocated for preemptive strikes against North Korea and Iran. So you can understand why many of us are uneasy when we read articles that quote former U.S. intel officials about shoe-horning intelligence to fit a certain policy or former State Department officials saying, ``The pattern that I have seen with Bolton then and subsequently is that he has established quite a track record of cherry picking intelligence information that serves whatever case he is going to make.''

Mr. Hook, I know Mr. Bolton is not the only one driving policy, but I am trying to lay out exactly why, despite our strong desire to take the Iran threat seriously and stop Iran's dangerous activities, there are legitimate concerns about

taking the Administration at its word. I appreciate in your testimony that the policy is to avoid conflict, but there are a lot of people who fear that the policy is to provoke Iran so the U.S. has no choice but to respond. And our job here in Congress is to make sure that we do not put U.S. men and women in harm's way without a darn good national security reason.

So when Secretary Pompeo lists recent attacks, ``instigated by the Islamic Republic of Iran and its surrogates against American and allied interests,'' and includes a bombing in Kabul that the Taliban had already taken responsibility for--and nearly every expert is surprised by the claim--we as elected representatives of the American people deserve to know what is behind the claim.

Secretary Pompeo told the Senate Foreign Relations Committee and I quote, ``There is no doubt there is a connection between the Islamic Republic of Iran and al-Qaida. Period. Full stop. The factual question with respect to Iran's connections to al-Qaida is very real. They have hosted al-Qaida. They have permitted al-Qaida to transit their country.''

I would refer you, Mr. Hook, to the 2001 Authorization for the Use of Military Force in which it says, ``The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11th, 2001, or harbored such organizations or persons in order to prevent future acts of international terrorism against the United States by such nations, organizations, or persons.''

Mr. Hook, is the Administration preparing to tell Congress that it has the authority to launch military action against Iran because one of Osama bin Laden's sons has been living in Iran?

Mr. Hook. May I first start with the intelligence that you mentioned. I think, last weekend, the House Intelligence Committee chairman said that the evidence of Iran's responsibility for the attacks is, ``very strong and compelling.'' There is no cherry picking----

Mr. Deutch. No, I understand.

Mr. Hook. Yes.

Mr. Deutch. But I would ask the question again. Are we--the concern obviously is that some of the statements that I have read suggest that the Administration is prepared to say that it has the authority to launch military action against Iran because under the 2001 AUMF because one of Osama bin Laden's sons has been living there. How about because there are former al-Qaida members living in or transiting through Iran? Is that enough to justify a reliance in the 2001 AUMF to take military action against Iran?

Mr. Hook. Well, I am happy to answer the question. I just want to first underline as I said in my opening statement that we are not----

Mr. Deutch. I understand the policy. I appreciate that.

Mr. Hook. No, I am saying we are not seeking military action.

Mr. Deutch. I am grateful for that.

Mr. Hook. Right.

Mr. Deutch. I am just talking about the concerns that we have based on the statements that have been made. Is the Administration preparing to tell Congress that it has the authority to launch military action against Iran because there is direct evidence of Iran having operational control over al-Qaida?

Mr. Hook. If the use of military force is necessary to defend U.S. national security interests, we will do everything that we are required to do with respect to congressional war powers and we will comply with the law.

Mr. Deutch. I understand and I appreciate that. I would just ask again. Is there, based on what I have laid out and the statements made by the Secretary and the National Security Advisor, is it--do you believe that the Administration could launch an attack against Iran under the 2001 AUMF?

Mr. Hook. This is something which the Office of the Legal Advisor can give you an opinion on if you would like to submit it. That is a legal question.

Mr. Deutch. Well, we will submit that. In the meantime, I

would just remind you, Mr. Hook, Article I, Section 8 of the Constitution grants Congress the power to declare war. I would ask that you remind the President and the National Security Advisor and the Secretary of State of that.

And, finally, in my remaining seconds, I appreciate you raising Bob Levinson in your testimony. I just have one more simple question. What exactly is the Administration doing to help bring Bob Levinson home?

Mr. Hook. When we were in the Iran nuclear deal, the last meeting of the Joint Commission, which is the members plus the EU, I was in Vienna and I requested a meeting with Iran's deputy foreign minister. And I raised the cases of all of the American citizens who are being unjustly and arbitrarily detained in Iran, I demanded their release. I asked for an update for each of them.

We have our Special Envoy Ambassador Robert O'Brien who is working his entire life, his professional life is devoted to this, trying to bring Americans home. We are completely committed to this. What we have demanded is that Iran release these citizens. They are innocent and they need to be released. They know that. Conversations with the foreign ministry, which is often in the dark in these matters, not always very fruitful, but we are pursuing every avenue possible.

Mr. Deutch. Thank you, Mr. Hook.

Mr. Wilson.

Mr. Wilson. Thank you, Mr. Chairman.

And, Mr. Hook, Iran's ballistic missile program continues to advance because of the assistance of Chinese proliferators. While the State Department has taken steps to curb this proliferation, most recently sanctioning these individuals on May 22d, they have shown adeptness at circumventing previous restrictions and continuing to support Iran's missile arsenal.

Beyond the most recent sanctions, can you elaborate on the efforts undertaken by the Administration to counter Chinese weapons proliferation to Iran?

Mr. Hook. We have made it very clear to the Chinese both publicly and privately that we will sanction any sanctionable activity. And I think nations around the world know that we have undertaken this campaign of diplomatic isolation and economic pressure with great seriousness of purpose, and I think as a consequence we are seeing historic levels of compliance with American sanctions, especially the oil sanctions.

So we have now zeroed out Iran's exports of Iranian crude oil and we are confident that nations are going to comply with that. Whether it is an arms embargo, Iran is still under an arms embargo, I will remind the committee that that embargo expires in 17 months under U.N. Security Council resolution 2231 which memorialized this deal. It also lifts the travel ban on General Qasem Soleimani.

And so, we need to be looking ahead. I went up to the U.N. Security Council and briefed the entire Council in early May to talk about the concerns we have about provisions that are going to start expiring. The world's leading State sponsor of terrorism should not have an arms embargo lifted, but that is the path that we are on. In October 2020 the arms embargo expires and so do some of the travel bans.

So, we think it is--that is one of the reasons why we thought it was prudent to leave the deal. It puts us in a much better position to sanction arms embargo violations and we are committed to doing that.

Mr. Wilson. In line with that, on June the 12th, Iranian-backed Houthi rebels launched a cruise missile at Abha International Airport in Saudi Arabia, wounding 26 civilians. You have previously stated that Tehran will be held accountable for the attacks of its proxies. How will the United States hold Tehran accountable for the Houthi rebels increased aggression against civilian targets?

Mr. Hook. Well, we have been certainly trying to improve the competencies and the capabilities of our partners in the region who are on the front lines of Iranian aggression so that if they are attacked--and the Saudi East-West pipeline was attacked. You had a Saudi tanker attacked, an Emirati tanker, a Norwegian tanker, that investigation for some of those countries is still ongoing.

We very much support these countries and their right to defend when attacked, especially by Houthi rebels. Iran, the Islamic Republic of Iran has spent hundreds of millions of dollars organizing, training, and equipping the Houthis to fight at a level beyond which makes any normal sense and it has prolonged and intensified the conflict.

So we certainly would like to see a political solution so that we can bring the fighting to an end and end the humanitarian catastrophe in Yemen. Iran has been a key player on this and Iran is playing a very long game in Yemen. They would very much like to do in Yemen what they have been able to do in Lebanon and to use the Houthis in the same models that they have used Hezbollah in Lebanon.

And so, we are looking very closely at that. And we have now had half a dozen attacks, Mr. Ranking Member, you mentioned one of them. We have had a half a dozen attacks in roughly about the last month and a half, and this is why we decided to enhance our force posture in the region so that we can reestablish deterrence.

Mr. Wilson. And with the half dozen attacks, and now recently this week the United Kingdom and Saudi Arabia have identified that the United States' assessment of Iran's responsibility is clear, and additionally German Chancellor Angela Merkel has said there is strong evidence Iran is to be blamed for the attacks. Is there any more that you can share with us about identification?

Mr. Hook. You are right and it is important to highlight that. I mentioned earlier the chairman of the House Intelligence Committee identifying Iran, but you have also had Chancellor Merkel, the U.K. foreign minister, the Kingdom of Saudi Arabia has also done that.

I can just add some new information to this. Our intelligence confirms that Iranian vessels, operating in and around the Strait of Hormuz on June 12th and 13th, approached both the Front Altair and the Kokuka Courageous before each vessel suffered explosions. We assess this activity as consistent with an Iranian operation to attach limpet mines to the vessels. I can also say that a senior IRGC official confirmed that personnel, IRGC personnel had completed two actions.

So we are going to keep doing what we can to declassify intelligence without compromising sources and methods, but those who have been able to see the intelligence, and you have mentioned many of those people, all come away without any question that Iran is behind these attacks.

Mr. Wilson. Thank you very much.

Mr. Hook. Thank you, sir.

Mr. Deutch. Thank you, Mr. Wilson. And we are joined by the chairman and ranking member of the Foreign Affairs Committee, and I will recognize Mr. Engel for 5 minutes.

Mr. Engel. Thank you, Chairman Deutch and Ranking Member Wilson. Thank you for calling this hearing. And, Special Representative Hook, thank you for appearing here today.

I have been among the biggest critics of the Tehran regime in Congress. I did not vote for the JCPOA because I felt it did not prevent Iran from having nuclear weapons, it only postponed it. I did not like the fact that they would be awash with cash to continue their terrorist activities. Iran is the world's most prolific State sponsor of terrorism. Its support for the Assad regime, its abysmal record on human rights, its imprisonment of Americans, and all this harmful behavior has isolated Iran and made them a threat to our security and that of our allies and partners.

These destabilizing and dangerous behaviors must end and, frankly, Iran's recent attacks on tankers in the Strait of Hormuz and the Gulf of Oman are setting the region on a course to a war. We obviously need to de-escalate this situation before the worst happens. However, the Administration's most recent steps seem to be pushing more toward confrontation than negotiation. The carrier group, rushing through the arms sale to Saudi Arabia--and we did a lot of work on that in this committee last week--coming up with a phony emergency to circumvent Congress and get these missiles to Saudi Arabia, putting more boots on the ground for supposedly defensive reasons, all framed by increasingly belligerent rhetoric, it

does bother me because we should be trying to prevent confrontation.

So I want to tell you what I see, Mr. Hook. I see a growing risk of miscalculation. I see more and more scenarios that could spark a conflict that could lead to the United States stumbling into war. And what I would like to hear from the Administration is the clearest possible statement that the United States is not looking for war with Iran and how we can get Iran back to the negotiating table.

And if we cannot hear that from the Administration, I want to make it very clear, Mr. Hook, that military action against Iran without the approval of Congress is absolutely not an option. Congress has coequal powers under the Constitution and, you know, we went through 20 years of going along with wars because we were told certain things were a fact when in fact they were not.

So I think that the Congress has to play a major role and the AUMF of 2001 has no relevance to the situation with Iran today. And I will resist the Administration using that as an excuse to go to war. If the Administration sees a threat that requires military force against Iran, your first stop is right here on Capitol Hill. There is no law, no aging authorization from another conflict--that is the 2001 AUMF--that could apply to war against Iran. The administration would need prior authorization from Congress before going to war.

So I want to just make my position very clear and say that my opinions of the Iranian regime have not changed. They are dangerous. They are the most dangerous regime in the Middle East and they are the No. 1 State sponsor of terrorism. But that is not an excuse for the United States to plunge into another war without congressional approval.

Let me ask you this, Mr. Hook. Secretary Pompeo said last week that Iran was conducting these attacks in the Gulf to convince the United States to lift its, and I quote him, ``successful maximum pressure campaign.'' While sanctions and other forms of pressure have undoubtedly hampered Iran's economy, there is little indication they have changed the behavior of the Iranian Government or reduced Tehran's regional influence. So how would you define success in terms of the maximum pressure campaign?

Mr. Hook. In my opening statement, I presented a number of things that we are seeing in the region that suggest that Iran's proxies do not have the financial means that they used to under the Iran deal because our sanctions are denying the regime historic levels of revenue. Iran provides Hezbollah, Mr. Chairman, I am sure as you know, 70 percent of its operating budget. That is $700 million a year. The leader of Hezbollah, in March, had to make a public appeal for donations. It is the first time they have done that in their history.

You have Shia proxies in Syria saying to the New York Times, ``The golden days are gone and they are never coming back. Iran does not have the money that it used to.'' I mentioned there has been a 28 percent cut to Iran's military budget, in March. During the Iran nuclear deal, Iran's military spending reached record levels.

So our sanctions are working and they are denying the regime the revenue that it otherwise spend in with on Hamas, Palestinian Islamic Jihad, Hezbollah, Shia proxies in Syria, Iraq, the Houthis in Yemen, underground groups in Bahrain. And so that is a very good thing. It is also the case that Iran has never come to the negotiating table in its 40-year history without pressure. And prior administrations have--sorry.

Mr. Engel. No, no. I am sorry. I did not mean to cut you off. But I want to--it is in reference to what you are saying now. So, is our ultimate goal or is the Administration's ultimate goal to compel Iran to negotiate and does U.S. strategy match the intelligence community's assessment on how to get Iran to negotiate?

Mr. Hook. It does. It does.

Mr. Engel. It does. OK.

Well, thank you, Mr. Chairman. I think my time is out.

Mr. Deutch. Thank you, Chairman Engel.

Ranking Member McCaul, you are recognized.

Mr. McCaul. Well, thank you, Mr. Chairman and Ranking Member. I have a very brief statement and I have a couple

questions.

Just last week, Norwegian and Japanese oil tankers lawfully traversing the Gulf of Oman were attacked by Iran. We have all seen the evidence for ourselves. This was Iran's second attack on international shipping in weeks. Moreover, Iran attempted to shoot down a U.S. surveillance drone in the area. These attacks were no coincidence within days of the Administration's announcement they would no longer grant waivers for Iranian oil. Tehran responded with threats to protect and defend Iran's waterway as a retaliatory measure.

This spring, Iran displayed propaganda on a billboard in downtown Tehran showing United States and Israeli ships being sunk in a battle. The billboard read in English, Farsi, Hebrew, and Arabic, ``We drown them all.'' Total propaganda, not to mention the fact that they fired a rocket at our embassy in Iraq.

Iran continues to flout U.N. Security Council ballistic missile sanctions. They continue to enable its network proxies to wreak havoc. In fact, the top general in Iran called for prepare for war to the proxies. Our general said the threat is imminent. Of particular concern are the Houthi attacks on Saudi oil fields and airports.

The threat Iran poses to the United States goes back to 1979 in the storming of the U.S. embassy in Tehran and has continued with the deaths of 600 servicemen from 2003 to 2011 which Iran bears responsibility for. In May, the threat to U.S. personnel in Iraq was judged so significant that many of our diplomats were evacuated. A few days later, as I mentioned earlier, a rocket landed near the U.S. embassy in Baghdad.

Iran's announcement that it will begin enriching and stockpiling uranium in violation of international commitments should concern everyone on the planet. All these actions reveal desperation on the part of Iran. In my view, the sanctions are working. It is crippling Iran and it is crippling their economy. They are cash starved and Hezbollah now is begging for cash. To me, these are all positive signs. Their cries for attention are a call for action for the United States and our allies.

I believe our maximum pressure campaign is working. We must continue to meet their aggression with forceful diplomacy. And I believe all of us, the Administration, Republicans and Democrats on the Hill, agree that peace is preferable to war. No one wants to see military action against Iran, but rest assured the United States will be prepared to respond to any attacks against our security and security in the region.

My question has to deal with the thousand troops that have been deployed in the region and our military assets and what is the purpose for their presence and are we, do we have any contingency military plans?

Mr. Hook. Thank you for your statement, Mr. Ranking Member. Yesterday, Secretary Pompeo and I traveled to Tampa, Florida and met with the new commanding general of both CENTCOM and SOCOM. We had very good discussions while we were there. We want to make sure that we are deeply coordinated with the Defense Department across a broad range of issues.

As you pointed out, we have sent about a thousand additional troops to the region. The decision to deploy, to expedite the passage of the USS Abraham Lincoln Carrier Strike Group, was made on May 3d. We started in late April and early May, started to receive very credible and very disturbing intelligence threat streams that Iran was plotting attacks against American interests in multiple theaters. And the President and his national security cabinet were agreement that we needed to enhance our force posture in the region, which we have done.

We think that that has helped to decrease the risk of miscalculation, and a lot of what we were concerned about at the time has not come to pass for the time being. We have not relaxed our vigilance against these threats from various vectors and I think we have put in place the right kind of policy to restore deterrence against these attacks.

What we have seen so far have not been on the scale that we have expected, but that does not mean that Iran is not capable of doing those things. But we have made it very clear that there will be severe consequences if Iran does go down that

road.

Mr. McCaul. I appreciate your message of deterrence and defending our allies in the region and our interests and commerce in the Strait of Hormuz, which is vitally important to energy throughout the world.

I just want to conclude with this, Mr. Chairman. That in our Department of Defense approps bill that we will be voting on, there is a repeal--you talked about the AUMF and I think it is something this committee if, God forbid, we do go to war with Iran, which I do not think will happen. I think, you know, I think as Churchill talked about, you know, weakness invites aggression. Reagan talked about strength through peace, peace through strength. You are showing strength. But in this DOD approps bill it repeals the 2001 AUMF without a replacement. That would mean, Mr. Chairman, that all global counterterrorism operations worldwide will be unauthorized by Congress. I think this is a very dangerous move. I think we should reconsider that bill that is going to be voted on this week before the Congress. And with that I yield back.

Mr. Deutch. I thank Ranking Member McCaul.

Mr. Trone, you are recognized.

Mr. Trone. Thank you, Mr. Chairman. And, thank you, Mr. Hook, for your service.

Like my colleagues, I am concerned about what looks like deliberate attempts by the U.S. to be on a war footing with Iran. I am not convinced that it is an effective way to bring Iran to the negotiating table, if that is indeed what President Trump wants. But I am also interested in what is our end game. There are roughly 40 million of the 80 million folks in Iran that are on the young side, 25 to 54. They are going to be here a long time and many of those folks have very pro-American attitudes.

How do we seek to work with those younger folks that have a pro-American attitude for a better future for them, yet still hold a tough line with the regime while letting the others know we are open? Thinking long term, five, ten, 20 years down the road would be a better move than just thinking about short term. What are your insights in this area?

Mr. Hook. It is a very good question. The longest suffering victims of the Iranian regime are the young people of Iran. And whenever there have been major protests, the regime has responded with brutality. And it has been very hard for an organized opposition to emerge in Iran in the way that Solidarity emerged in Poland.

So, in fact, much of the energy that you see in Iran today is through the women's movement and protesting the mandatory, compulsory wearing of the hijab. As you sort of look at our new foreign policy to Iran, it certainly has a diplomatic piece. It has a piece to restore deterrence. One of the most important pieces has been standing with the Iranian people.

I recently, a few months ago, taped a video message to the Iranian people outside of the Iranian embassy, which is on Massachusetts Avenue, and I contrasted how we have taken care, the State Department under its obligations, international obligations has maintained this embassy. The Iranian regime has turned our embassy into a museum of the Islamic Revolution with ``Death to America'' spray painted in signs around the embassy.

The Iranian people do not believe in death to America. We believe as you said that they are pro-American. And this regime has divided, I think, the Iranian people and the American people in ways that obviously 40 years have been tragic, I think, for the Iranian people. We are going to continue to stand with them. Much of what we are demanding on that list of 12 are the same demands the Iranian people are making. They do not want to see this regime spend billions of dollars to fund Assad, who uses chemical weapons, while they are struggling at home.

We have seen them gravely mismanage their natural resources. I released a report in September of last year. To the best of my knowledge it is the first report issued by the Federal Government documenting the environmental destruction of this regime over the last 40 years. I will give you one example. When this regime came to power there were six ancient dams and seven modern dams. That was in 1979. Today, there are 600 dams that have been built. They are largely job projects

for the IRGC, so the elite get richer and the poor suffer, and so we call these things out.

And so, when you look at the drought that has plagued all of Iran, it is compounded by this regime's mismanagement. It is a kleptocracy. It is a corrupt, religious mafia that serves its own interests and robs its own people blind.

Mr. Trone. Quickly, let's turn our attention to Egypt, the tankers that go and bring the illicit crude oil from Iran to Syria through the Suez. In March, the Wall Street Journal reported Egyptian authorities blocked the crossing of at least one tanker. But in May and June, there has been a sharp increase of these shipments of oil despite the escalation of sanctions. Has Egypt has become less cooperative in its efforts to prevent illicit Iranian oil shipments from passing through the canal? And in State's view, does Egypt have an obligation to prevent the oil shipments passing through the Canal?

Mr. Hook. You have asked the right question. It is a very good question. I have made trips to Egypt, Secretary Pompeo has, my colleagues on the National Security Council have traveled there, to discuss the very issues that you have raised. Egypt does have to administer the Constantinople Convention, too, as the operator of the Suez Canal. It has certain obligations and responsibilities under that Convention.

We have had many discussions with them about that. Now that we have zeroed out imports of Iranian crude oil, any oil that is moving on the waters unless it is going into floating storage or something like that, but if it is leaving Iran and it is not going to floating--and it is going to a country, it is illicit and we have sanctioned it. We have already sanctioned some illicit oil and we will continue to do that.

We have made ship operators around the world to understand that this money, this oil that finds its way into Syria or into Lebanon is IRGC oil. Now that we have used congressional authorities to designate the IRGC and the Quds Force as a foreign terrorist organization, that allows us to prosecute and to hold people criminally liable as a felony the material support to the IRGC and the Quds Force.

So we plan to use the authority vigorously. We have used it vigorously in the context of Hezbollah and we will use it in this context. And we believe there is an opportunity there. We do not believe that any port operator or any ship operator should take on the liability of working with Iranian tankers.

Mr. Trone. Thank you.

Mr. Deutch. Mr. Kinzinger, you are recognized.

Mr. Kinzinger. Thank you, Mr. Chairman.

And, again, sir, thank you for being here and for your service. I think it is important at the top of this that we note that when we talk about Iran, we are talking about the government and not the people, two very different things and I think that is important to distinguish.

I think it is interesting in all this, I remember prior to this administration still having concerns about Iranian attacks to troops in interests in the region, so it is not like this is something that has popped up with the election of President Trump. I mean, specifically, in our counter-ISIS campaign there was a lot of worries about what would happen to the re-energized Shia militias in Iraq.

And so, a quick point to the--I think I would say some, not my friends necessarily on the other side of the aisle, but things we hear, the blame America first crowd that use Cuba, for instance, and Venezuela is a great example of how to do governance, first off, 9/11 was not an inside job. The Bermuda Triangle is not aliens. We landed on the moon. Vaccines save lives. And Iran did the attack in the Gulf.

And that is, I think, the biggest thing to understand. You continue to see the conspiracy theorists that pop up that can take any amount of evidence and try to cast blame and say it is a false flag, and usually we relegate those to the very extremes of political discussion. But I think sometimes we are seeing that enter the more mainstream now because, frankly, some people have let politics get in the way of good foreign policy.

And I think another point is, look, innocent Iran is not the result of, you know, meany Americans. The reality is this has been a battle against the United States, our interests,

Israel's interests, and our allies' interests for a very long time, for 40 years.

I want to ask you a few questions though. Thinking of Lebanon specifically, is Hezbollah better off with the deal in place or without the deal in place? And I am going to ask a series of kind of quick ones, so.

Mr. Hook. When we were inside the Iran nuclear deal we were not able to use any of our energy or financial sanctions. The energy sanctions come to about $50 billion in revenue and that is the amount of revenue that a policy of zero imports of Iranian crude oil can achieve.

Mr. Kinzinger. And well, so, I just was in Lebanon and what I am hearing is Hezbollah is not better off now because of----

Mr. Hook. It is not. It is not. So, Iran has less money to spend today on its proxies than it did when this administration took office.

Mr. Kinzinger. And how much humanitarian aid has Iran sent to the Houthi rebels in Yemen or to the Houthi population in Yemen?

Mr. Hook. I am not aware of any aid that has gone from Iran to the Houthis.

Mr. Kinzinger. How many people do we estimate have died in the Syrian civil war, a general estimate?

Mr. Hook. I believe it is around a half a million who have died in the Syrian civil war and hundreds of thousands have been displaced.

Mr. Kinzinger. Do you think Assad could have survived without the help of Iran?

Mr. Hook. I think it is a very open question. It is certainly that Iran by--Iran deployed 2,500 IRGC fighters and they recruited 10,000 fighters from Afghanistan and Pakistan and other parts, so that together that is 12,500 troops that Iran organized. They gave Assad $4.6 billion in lines of credit and billions of dollars in revenue. It would have made a big difference had Iran not been on the field.

Mr. Kinzinger. And I will mention that that was during the existence of the Iran nuclear deal. Approximately, I do not need the number, but generally, do you know how many Americans died in Iraq as a result of Iran?

Mr. Hook. Six hundred and three Americans were killed by Iran. That is 17 percent of the total casualties during the Iraq War of Americans who were killed.

Mr. Kinzinger. Do you know in the last, say, 20 years how many U.S. military open strikes have we done in Iran?

Mr. Hook. Zero.

Mr. Kinzinger. Do you--let me ask another. Do you see strong nations that are confident in their future sabotaging oil tankers? Is that a typical kind of thing?

Mr. Hook. It is not a pattern of behavior we have detected in the region.

Mr. Kinzinger. Has the U.S. ever put limpet mines and sabotaged oil tankers?

Mr. Hook. No.

Mr. Kinzinger. And let me--I want to ask, mention a quick point about the Iran nuclear deal. So this was actually signed into law in 2015. The year obviously now is 2019. It has been 4 years, and as we all know time flies by, so if you think about that fact it is pretty incredible. So I want to advance, basically, 4 years, so that amount of time ahead today.

So in 2020, the U.N. ban on Iranian arms exports and imports will lift under the Iran nuclear deal. In 2023, so basically an exact amount of time from 2015 to today, again, the U.N. ban on assistance to Iranian ballistic missiles will end, ban on manufacture of advanced centrifuges will begin to expire. Assuming congressional approval, U.S. nuclear sanctions will lift.

And in that time again, 2025, snap back provisions will expire. In 2026, the cap on IR1 centrifuges will lift. The ban on replacing those with more advanced models will expire and restrictions on centrifuge research and development will end. And in 2031, all restrictions lift.

I make that point, sir, for those that think this is some amazing deal that will last perpetually into the future that we are already halfway to the beginning of this deal starting to expire, and we saw only worse behavior from Iran.

So with that, Mr. Chairman, I thank you. And again, Mr. Hook, thank you for being here. And I yield back.

Mr. Deutch. Thank you, Mr. Kinzinger.

Mr. Keating, you are recognized.

Mr. Keating. Thank you, Mr. Chairman.

I would like to initially say that, you know, years ago when I was in Iraq, just hours later I did see a rocket-propelled, Iranian rocket-propelled explosive device, take the lives of American soldiers that I was eating with just hours before that.

So this is no question, is no way at all to excuse their hostile activities, inexcusable activities, but I want to just look at your testimony a moment and just ask a couple of questions. No. 1, when you are talking about the non-nuclear activities of Iran, the malign activities, the missile testing, yes or no, the U.S. still had the option for sanctions and other actions even if we continued with the JCPOA, so we did have options absent leaving the JCPOA; is that correct, yes or no?

Mr. Hook. Bad options.

Mr. Keating. Yes or no, did we have options?

Mr. Hook. Bad options.

Mr. Keating. All right, we had options.

Mr. Hook. Bad options.

Mr. Keating. Later on, you are just saying that the decision to perhaps move forward with enrichment is a result of the fatal flaw of the agreement. Wasn't it true that Iran was conforming to the agreement? I have heard no countries say that they were not conforming to the nuclear agreement, abiding by it. And it was only after we tore up that agreement and moved away from a nuclear deal that provided some protection, clear protection, much greater protection from the nuclear threat of Iran, that it was the tearing up of that that was the causal effect, not a fatal flaw that was resulting in that.

And I think I will leave that as a statement because you are not likely to agree with it. But I believe it is true.

And in your testimony, just to get some consistency, you know, in other hearings we have had in our subcommittee and the committee as a whole, we are looking for policies and consistencies and resolve. In the conclusions even of minority witnesses we have no Russia policy. We have no China policy. We have no North Korea policy. We have no Syrian policy.

So, in your testimony, I just want to point out that you said Iran supported Assad's brutal war machine as the Syrian regime killed hundreds of thousands and displaced millions. Could you not say the same thing of Russia, exactly the same thing of Russia's activities?

Mr. Hook. I am going to leave that. We have a special----

Mr. Keating. Well, no. Could you not just as a layman, could you not say it?

Mr. Hook. Well, I want to stay out of Jim's lane----

Mr. Keating. Well, I do not want lanes here because that is precisely the point. If you do not have policies you can go into lanes that go nowhere.

Mr. Hook. Oh, no, no. I am happy to answer the question. We inherited the Russian military in Syria when we came into office, and so we had options as we were facing ISIS. The President made as his No. 1 priority the defeat of ISIS. He and Secretary Mattis put into effect a policy that achieved that objective. And so, we are very pleased with what we have been able to do to end the territorial caliphate that existed in Iraq and Syria.

Mr. Keating. But you said in your testimony as part of the rationale with Iran is Iran supported Assad's brutal war machine in Syria.

Mr. Hook. Yes.

Mr. Keating. It killed hundreds of thousands and displaced--I can make the argument that Russia was more pivotal than any country in turning the tide there and more responsible than any country other than Assad himself. I mean, so what is the consistency with Russia? Why are we not dealing with that issue with Russia?

Mr. Hook. In my statement I did not say that Iran had eclipsed Russia in culpability.

Mr. Keating. You left it out.

Mr. Hook. I am the Iran Envoy, so----
Mr. Keating. OK.
Mr. Hook [continuing]. I cover Iran. I am trying to make clear what Iran is doing in Syria.
Mr. Keating. This is the frustration we are having with the Administration. Everyone has their lanes. Everyone speak--you cannot deal with lanes when you are dealing with policy and there is no overarching policy and it is moving closer to conflict in this instance. I mean we are reaching a very serious stage, here.
Can you just explain to me, finally, in the few seconds I have left, what is that thread from the initial authorization to use military force that exists now they have been using? Explain to me the thread of how that could be used in this Iranian situation and the current conflict we are in now. To me, the thread doesn't exist. So explain to me where that thread is.
Mr. Hook. And could you--what do you mean by the thread, which thread?
Mr. Keating. The thread that pulls together the authorization to use military force that we are using against terrorists and extremists, currently, how does that apply to Iran? I do not see a connection at all.
Mr. Hook. We have not used military force against Iran. We have enhanced our force posture in the----
Mr. Keating. The Secretary said just 2 months ago that that is on the table; that that could be used absent action from Congress. So how--you are here in your lane representing the Secretary who said that that is something they could do. So I want to explain--since you are here and not the Secretary, I want to ask you where is the connection? I see none. I think you have to go to Congress to act in any kind of kinetic actions with Iran, absent our instant self-defense.
Mr. Hook. I had answered that question earlier for the chairman. I am happy to repeat the answer.
Mr. Keating. Please.
Mr. Hook. We will do everything we are required to do with respect to congressional war power----
Mr. Keating. No, no. I asked--that is not the same question.
Mr. Hook [continuing]. And we will comply with the law.
Mr. Keating. Where is the thread? Where is the connection? That is not the same question.
Mr. Hook. I am happy to explain this as best I can. We received credible threat reporting in late April and early May that Iran was plotting imminent attacks against American interests in multiple theaters. We enhanced our force posture in a defensive mode so that we could protect ourselves if attacked. That is it. That as far as we have taken this and no farther.
Mr. Keating. So there is no threat in the future that I have heard from you. I yield back.
Mr. Deutch. Thank you.
I would just let the members know that votes could be called as early as 1:15. The witness has to appear in the Senate at 2 so we will not be able to come back after votes. If members choose to use less than their 5 minutes, we will be able to get everyone in. I leave that up to you.
Mr. Zeldin, I recognize you.
Mr. Zeldin. Thank you, Mr. Chairman.
And, Mr. Hook, thank you for being here. There was strong bipartisan opposition to the Iran nuclear deal in this room. We asked--I asked Secretary Kerry why the deal was not being submitted as a treaty. The reason was because they were not able to get it passed. That was Secretary Kerry's answer to the question here in this room. There are flaws with the Iran nuclear deal that many have acknowledged in a bipartisan fashion as Mr. Kinzinger was just discussing with regards to the sunset clauses that are fast approaching.
The verification regime, we were told by President Obama and Secretary Kerry this deal was not built on trust, it was built on verification. They never read the verification regime. I am a Member of Congress. None of us have read the verification regime that was entered into between the IAEA and Iran. So there are flaws with the verification regime, but we

do not even know the full extent of everything that was agreed to.

And then third, all of the non-nuclear bad activities or the malign activities, many which we have gotten into, by withdrawing from the Iran nuclear deal much of the leverage is coming back to the table that brought the Iranians to the table in the first place. I am not surprised at all to see Iran acting out as they are feeling the pressure. They are feeling the pressure from the sanctions. They feel pressure from hardliners within their own country. Some of it is related to the domestic politics, plus they are the world's largest State sponsor or terror and they have other ambitions.

Understanding the scope of the malign activities, non-nuclear activities included test-firing intercontinental ballistic missiles. The intercontinental is not for Israel, the intercontinental was meant for us. The Houthis, helping the Houthis overthrow the government in Yemen, the support for the Assad regime, support for Hezbollah, the activities that we have seen beyond just those, and of course as Mr. Kinzinger often points out, as he should, the killing of United States service members.

We had no leverage left to be able to deal with all these other activities. Some would argue we did have leverage. Well, the Iranians were not at the table. And the conditions may not yet be set to be able to negotiate something in the middle of June 2019, but we are getting there and the strategy is working.

Now I think it is important that you are here to clarify what the Trump Administration's policy is with regards to Iran and I think it is our responsibility as Members of Congress to give you that opportunity to clarify it and certainly not to muddy the waters. I believe that President Trump believes that Iran is an adversary that does not respect weakness, they only respect strength. We cannot be silent not because we want war, but because we want to prevent it.

We have many people in our Federal Government, some might be political appointees, some might be career, who believe in the four instruments of national power, in the diplomacy, information, military, economics. There is a belief that by having the military option on the table that diplomacy, multilateral, bilateral, the information campaign, the economic pressure, are all more effective. The military option is the last possible option. I have spent a lot of time with the President of the United States and we have discussed this topic. The President does not want to go to war with Iran.

The President of the United States does not want to go to war with Iran. But there is a belief in the four instruments of national power that by having the option on the table, it is the last possible option, that it helps make the other aspects of our instruments of national power more effective.

I also wanted to point out something with regards to the Iranian people. There are millions of Iranians who are great freedom-loving people who want a better future for their country and there is no one more motivated in the entire world to have a better direction for their country than those many millions of Iranians who right now--talking about young Iranians and the impact that they are feeling, young Iranians, we are talking about people under the age of 50, 55, people their entire lives and their kids' entire lives have only known this brutal regime that oppresses its own people.

With the brief time that we have left, have there been any ways prior to exiting the JCPOA that Iran violated the letter of the JCPOA?

Mr. Hook. Could you say that one more time?

Mr. Zeldin. Before we withdrew from the JCPOA, are there any examples of Iran violating the letter of the JCPOA? For example, assembling additional advance centrifuges which Annex I, Paragraph 61 prevented, or exceeding IR6 centrifuge allowances, or twice going over the heavy water amount that the IAEA acknowledged, or refusing access to military sites?

Mr. Hook. Yes. I remember when I was in Vienna for the meeting of the Joint Commission, I had raised some of these issues. There have been what I have called tactical violations of the Iran nuclear deal. We have not seen a material breach. The regime has recently threatened material breach of the Iran

nuclear deal. That is the best I can do to answer that question.

Mr. Zeldin. Yes, I think it is just important to note--and my time is up--that there have been violations of the JCPOA that a lot of people may not be aware of. I yield back.

Mr. Deutch. Thank you.

Thank you, Mr. Zeldin. And, Mr. Sherman, you are recognized.

Mr. Sherman. Thank you, Mr. Chairman.

It is a tragedy that the Nation that gave us the first human rights document, the Cyrus Cylinder, a nation that has been at the forefront of world civilization for four millennia is ruled by this regime. We need democracy in Iran, but it will not come from an American military force, it will come from the Iranian people.

There is discussion, Mr. Hook, of possible military action against Iran. Is it the Administration's position or understanding that they need to abide by the War Powers Act which limits the power of the President to deploy our troops into hostilities?

Mr. Hook. I think we--let me first just say to echo your first point, let's be very clear. The future of Iran will be decided by the Iranian people. I cannot say that enough times.

Mr. Sherman. And I would add that the United States has in the past sponsored democracy conferences, reached out through the State Department Bureau of Democracy, Human Rights, and Labor, and that America can provide some assistance to those working for democracy in Iran. I would like to see us take all the radio broadcasts that I hear in Los Angeles in Farsi and get them retransmitted, very inexpensively I might add, so that the Iranian people could hear the hundreds of different opinions and see the flowering of different ideas and see what a public free debate is like.

But let's go back to the War Powers Act.

Mr. Hook. As I think I said earlier, we are not looking for military action. We have kept our foreign policy squarely in the guardrails of economic pressure and diplomatic isolation.

Mr. Sherman. I understand that and I will point out that if the economic pressure we were imposing was given--if we gave the reason for that being Iran's wrongful actions in Syria, which have cost hundreds of thousands of lives not to mention Yemen, et cetera, and their human rights, we could have stayed in the JCPOA so they would be bound by it and they would still be subject to the same sanctions. But instead, we have pulled out of the JCPOA which, as you point out, Iran may be in material breach of and we will cross that bridge when we get--well, that is, it is important we as the legislative body that we focus on what the legal parameters are.

And I know it is not your intention to invade Iran, but this is a discussion of your legal right to do so, or the Administration's legal right to do so, without Congress. And it is quite possible you will come to Congress under extreme conditions and ask for this or that authority. But based on the authorities that you have now, what is the power of this administration? Are they subject to the War Powers Act?

Mr. Hook. I am not a War Powers Act scholar. I can only tell you that everything that we do would be lawful and everything that we are trying to do now is defensive. I cannot underline--there is no talk of offensive action. We are trying--it is a defensive move that we have made.

Mr. Sherman. I understand. It is not the position of the Administration that the 2001--and we talked about this earlier that the 2001 Authorization to Use Military Force against those who carried out 9/11 would authorize a war against Iran, correct?

Mr. Hook. I am not a scholar in this area.

Mr. Sherman. Do you take the--did the Islamic Republic bomb us on 9/11?

Mr. Hook. Did the Islamic Republic bomb us on 9/11?

Mr. Sherman. Did the Islamic Republic and one of the entities responsible for the deaths on 9/11?

Mr. Hook. No.

Mr. Sherman. Thank you. I would point out that we have had legal scholars in this room talk about the War Powers Act and those who claim it is unconstitutional have said, however, that

the power of the purse is critical and decisive and binding.

And I would point out that we will, this week, pass a defense appropriations bill that contains a provision that we first put in there in 2011 when I offered it as an amendment, and we have been able to get it into the base text so nobody is talking about it because we do not have to vote on it, that says that no moneys can be spent in contravention of the War Powers Act. So if we were to deploy military forces in contravention of that act, we would not only be in violation of that law, we would be in violation of the appropriations bill.

So I hope very much that we work together to change the policy of this regime short-term, particularly with regard to Syria and the Strait of Hormuz, and longer term that we bring democracy to Iran. I yield back.

Mr. Deutch. Thank you. Mr. Reschenthaler, you are recognized.

Mr. Reschenthaler. Thank you, Mr. Chairman. And thank you, Mr. Hook, for being here today. As a veteran of the Iraq War, I sat face to face in the courtroom with members of al-Qaida terrorists who had made and planted IEDs, and murderers. I saw firsthand the successes and failures of U.S. foreign policy in the Middle East.

While our political, military, economic, and technological advantages are unmatched, Iran remains one of the greatest threats destabilizing the globe. As the world's largest State sponsor of terror, Iran continues to sow chaos in Yemen through the Houthi proxies, continues to fund Hezbollah in Lebanon and across the world, continues to prop up the Assad regime in Syria, and chants ``Death to America'' in its capital of Tehran.

Mr. Hook, can you explain the larger strategic benefits and goals of the U.S.-Saudi Arabia relationship and the negative impacts of abandoning that relationship as it pertains to U.S. national security interests in Iran?

Mr. Hook. I think you see our foreign policy emerging quite clearly in Riyadh. The President's first trip overseas was to Saudi Arabia. They had brought together, I want to say, 55 Arab Muslim nations, one of the largest gatherings that anyone can recall. The President spoke. King Salman spoke. And we talked very much about the need to confront extremism and to counter extremism.

And we also want to as part of burden sharing, America, the experiences that you describe, there are so many people who can talk about that in our military, and we are doing everything we can to expand burden sharing. And that requires improving the capabilities of our regional partners so that they can be a counterweight to Iran. And that reduces the burden on us to provide the levels that we have done historically.

And so whether it is Saudi Arabia or UAE or Jordan, Israel, a number of countries in the region, we very much want to see them in a position of strength and in sovereignty. Iraq, we very much want to see Iraq strong, stable, and sovereign. We want the Iraqi military to have a monopoly on military force. We do not want to see the PMF, especially those that Qasem Soleimani organizes, trains, and equips, to be stronger.

We do not need two States within a State. We do not need two militaries within a State. That is what we have in Lebanon. This is the foreign policy agenda of Iran. It is to try to create two militaries and two States within a State and to stoke sectarian identities, catalyze sectarian identities and dissolve national identities. When we talk about how like Iran destabilizes the Middle East, this is what we are talking about. Iran pours sort of this--it adds this religious dimension to political conflicts which has increased bloodshed and suffering.

And so, to the extent that our policy is denying Iran the revenue and a lot of the capabilities it has to support these proxies, that improves the situation in the Middle East.

Mr. Reschenthaler. Thank you, Mr. Hook. I yield to my colleague from New York.

Mr. Zeldin. Thank you. Mr. Hook, is it true that in February 2016 and November 2016 that Iran had acquired more heavy water than they were allowed to under the JCPOA according to the IAEA?

Mr. Hook. I can give you the specific answer to that but we

had registered concerns that and I believe----
Mr. Zeldin. That can be a yes or a no.
Mr. Hook. I believe the answer is yes that they had increased the stockpiling of heavy water.
Mr. Zeldin. That is correct. OK.
Mr. Hook. And we had raised--I had raised that when we were in Vienna. It is a while ago.
Mr. Zeldin. Is it not true that Iran had acquired more than the necessary amount of IR8 centrifuge rotor assemblies for R&D purposes with 16 times more capacity than the IR1 to enrich uranium?
Mr. Hook. Our assistant secretary Chris Ford would be able to answer that specifically. I do not have that answer in front of me. We are happy to give you the answer to that.
Mr. Zeldin. I would like you to know that so if you can also speak to Mr. Ford as well, because you should be able to answer in the affirmative.
Also, Iran, isn't it true that they acquired more--assembled more IR6 centrifuges than they were allowed to under the JCPOA?
Mr. Hook. I believe that is the case. We have a bureau that does only this----
Mr. Zeldin. Yes, OK. I understand the point and we had the back and forth earlier. But I think it is important for you to have these answers with regards to their violations during, while we were in the plan.
Mr. Deutch. Thanks. The votes have been called. We are going to keep going as long as we can.
Mr. Lieu, you are recognized.
Mr. Lieu. Thank you, Mr. Chair.
Thank you, Mr. Hook, for being here. I agree with you that Iran is a malignant State actor. That is a totally different issue as to who is authorized to allow force to be used against another country.
So under our Constitution, does the President have the power to declare war?
Mr. Hook. I think this is a discussion----
Mr. Lieu. It is not a trick question. Under our Constitution, does the President have the power to declare war? It is just a yes or no.
Mr. Hook. We are----
Mr. Lieu. OK, all right. Let me make it really easy for you. Under the Constitution, Congress has the power to declare war, correct? It is not a trick question, sir. Have you read the Constitution?
Mr. Hook. We will do everything we are required to do.
Mr. Lieu. Mr. Hook, have you read the Constitution?
Mr. Hook. I have read the Constitution.
Mr. Lieu. OK, under the Constitution, the framers gave Congress the power to declare war, correct? It is just a yes or no.
Mr. Hook. This is--my understanding is that we are here to talk about Iran foreign policy, which I can do. If there was a separate hearing----
Mr. Lieu. Under the Constitution the framers gave Congress----
Mr. Hook [continuing]. On war powers, I believe we should have----
Mr. Lieu. OK. Mr. Chair.
Mr. Hook [continuing]. If there's a hearing on war powers----
Mr. Lieu. Mr. Chair. I am going to stop this line of questioning. I am going to submit the U.S. Constitution for the record.
Mr. Deutch. Without objection, Article----
Mr. Lieu. OK, now. Let's ask about crafting Iran policy. You would agree, wouldn't you, that in crafting Iran policy, or actually any policy in the State Department, you want employees who have expertise in that subject area; isn't that right?
Mr. Hook. We have many experts on Iran in the State Department.
Mr. Lieu. OK. And you have career employees that worked in prior administrations both Democratic and Republican and they go through different administrations. It would not be appropriate to remove a career employee simply because they

worked in an administration of a different party, correct?
Mr. Hook. That is a personnel question that I would refer you to the personnel department on that.
Mr. Lieu. It is not trick question. We do not remove career employees because they happen to be--work in a prior administration; isn't that right?
Mr. Hook. Can you ask the question one more time, please?
Mr. Lieu. OK. You have career employees that serve based on the Administration. They execute that administration's policies. You do not remove them simply because there is a change in administration, right? And we are not on the political appointees, I'm on career employees.
Mr. Hook. This is a personnel authorities question that I am not an expert in.
Mr. Lieu. So you think it is OK to actually remove a career employee?
Mr. Hook. No, I did not say that. You are asking me--I am not an HR--I do not work in HR.
Mr. Lieu. I am asking really simple questions.
Mr. Hook. No, but you are asking an H.R. question. I do not do human resources.
Mr. Lieu. OK, all right. Is it appropriate to remove a career employee because of national origin?
Mr. Hook. I have to assume that that would be inappropriate, but I am not----
Mr. Lieu. All right, very good. We got you to answer one question. I am going to have this committee give you an email and it is an email that was sent to you on Tuesday, March 14, 2017 from Juli Haller describing a career employee named Sahar Nowrouzzadeh. And in the email, she says Sahar Nowrouzzadeh is on detail to your office, basically SP, and that she is trying to get her suspended.
And she notes as background she worked on the Iran deal, specifically works on Iran within SP, which is your office, was born in Iran. Are any of those factors relevant in removing a career employee from detail, sir?
Mr. Hook. This is an email from Juli Haller.
I do not--I did not write this email, so I am just not sure what your question----
Mr. Lieu. Yes. But you did respond saying, ``This initial info is helpful.'' Is it helpful to know that a career employee worked on the Iran deal, works in your office, and was born in Iran?
Mr. Hook. No, no. Because if you look at the--I am looking at this in real time now. It says, ``This official permanently belongs to NEA as a career conditional employee.'' I asked, ``What does career conditional mean?''
Look----
Mr. Lieu. But you said this initial info is helpful. Is it helpful to know her national origin?
Mr. Hook. Congressman, as you know there is an Inspector General report on this very subject that you are asking about. I am looking forward to the release of that report and it would be improper for me to comment on this matter until----
Mr. Lieu. All right.
Mr. Hook [continuing]. That review has concluded.
Mr. Lieu. OK, thank you.
So Saudi Arabia is viewed by this administration not only as a U.S. ally but also as a counterweight to Iran in the region; is that correct?
Mr. Hook. Saudi Arabia as a counterweight?
Mr. Lieu. They oppose Iran.
Mr. Hook. Saudi Arabia is regularly attacked by an Iranian surrogate.
Mr. Lieu. OK. The U.N. today reported that the crown prince of Saudi Arabia should be investigated for murdering Jamal Khashoggi. Do you agree with our own CIA's assessment that the crown prince ordered the murder of U.S. resident Jamal Khashoggi?
Mr. Hook. On the subject of that Secretary Pompeo has made it very clear that we are determined to hold every single person who--materially responsible accountable. The Saudi prosecutor has taken important steps toward accountability for the tragic killing of Jamal Khashoggi, but more needs to be done.

Mr. Lieu. Thank you. I look forward to you holding the crown prince accountable. I yield back.

Mr. Deutch. Thank you, Mr. Lieu. Mr. Watkins, you are recognized.

Mr. Watkins. Thanks, sir.

Thanks for being here, Mr. Hook. Does the Administration believe--hold the long-held belief to ensure freedom of navigation throughout the Persian Gulf, Strait of Hormuz, and other waterways?

Mr. Hook. Yes, it is an important national security and economic priority.

Mr. Watkins. Last week, the President tweeted, ``It is too soon to even think about making a deal. They are not ready, neither are we.'' What do you believe it will take in order for Iran to begin negotiations, sir?

Mr. Hook. From the time we left the deal we made it very clear that we want a diplomatic solution to the broad range of threats that Iran presents to international peace and security. We have made that repeatedly. The President has done it repeatedly that he is ready to sit down. Secretary Pompeo said he will sit down without preconditions.

President Trump endorsed Prime Minister Abe making an historic visit to Iran to pursue a diplomatic outcome and to lead the talks. The supreme leader of Iran put out a few tweets that made it very clear that he will not even listen to the President, and then for good measure he attacked a Japanese-owned tanker. Iran continues to reject American overtures for a diplomatic solution, and we have seen no relaxing of that.

And we have made it also very clear that Iran can either start behaving like a normal country or it can watch its economy crumble. And we are committed to driving up the costs of Iran's violent foreign policy.

Mr. Watkins. Final question, Mr. Hook. The regime in Tehran is one of the world's worst human rights abusers. How does that or does that and how does that weigh into the calculus of our dealings with Tehran?

Mr. Hook. In September, I put out a report that was released during the U.N. General Assembly and I devoted an entire chapter to Iran's human rights violations. I will give you one example. There was one Canadian-Iranian who founded a, I think it was the Persian Wildlife Foundation. He was arrested and then died in prison.

You have Iranians protest because they want clean air and they want clean water and they want to protect wildlife and the regime responds by killing them. You have women around Iran who are denied the basic dignity. And so, we stand very strongly with the Iranian people, especially Iranian women.

Mr. Watkins. Yes, we do. Thank you, Mr. Hook.

Mr. Chairman, I yield back.

Mr. Deutch. I thank you, Mr. Watkins. I now recognize Mr. Malinowski.

Mr. Malinowski. Thank you. Let me start by echoing the chairman's comments about our hostages, including Bob Levinson whose family are constituents of mine, and I just really hope that we prioritize this diplomatically and not subsume it in a sea of demands that are much less likely to be met in the near term. And now I have a few questions.

Sir, the President in recent days has said that the Iranian attacks on the tankers in the Gulf were very minor. What did he mean by that?

Mr. Hook. When we were looking at the sort of intelligence that we were seeing--and I do not know, Congressman, if you have seen it yet, but the intelligence that we were seeing suggested attacks, I think, on a very significant scale.

Mr. Malinowski. OK.

Mr. Hook. And that were also directed at American interests.

Mr. Malinowski. All right. He also said that Iran is a much different country today than it was two and a half years ago when, quote, ``I came to office. We are not hearing 'Death to America' anymore,'' he said. He seemed, and emphasized that his main interest is dealing with nuclear issue. What does he mean by that?

Mr. Hook. Iran is, by almost every metric, weaker today than when it was over 2 years ago when we came into office. We

think that--that is just simply raw numbers and I discussed some of those in my opening statement. And so, it is weaker.

Mr. Malinowski. OK. It is a little--I mean the implication of his statement was that they were a little less threatening, that the policy had been successful. And I am asking because I think there is a disconnect, if I may, between what we hear from different parts of the Administration. When I listen to the President, it seems on most days that what he is primarily interested in is improving on the nuclear deal, which was obviously flawed, perhaps extending the, or eliminating the sunset clause, et cetera.

What I hear from you is very different. What I hear from you is that our policy is to bankrupt Iran until they meet this maximalist set of 12 demands, until they become a normal country as Secretary Pompeo and you just said, demands that include basically cutting off ties with all of their proxy forces in the region, the nuclear issue just one small part of it.

So which is it? Are we going to--are we using these sanctions to improve the nuclear deal or are we using the sanctions to fundamentally change the nature of the Iranian regime?

Mr. Hook. You have mentioned one quote. I think you have to look at the quotes in their totality. We have quotes, but we also have speeches. And the President has also made a couple of addresses to the U.N. General Assembly laying out in more detail some of these concerns that you talked about.

Money is the sinews of war. And if we do not go after the money, Iran is able to fund its proxies which then have direct consequences for American interests in the Middle East. Our goal is not--you had said it. I never said that we are trying to bankrupt the regime. I said that we are trying to make their foreign policy prohibitively expensive. And that is the right policy. It would be, I think, diplomatic malpractice to somehow encourage Iran to have more money so that they can spend it on their proxies.

Mr. Malinowski. No, I understand. You are reaffirming your point, which is the purpose of the sanctions is to change their entire foreign policy, it is not just to deal with the nuclear issue.

Let me read you a quote from another speech from Secretary Pompeo who said of the people of Iran, the people of Iran will get to, quote, ``will get to make a choice about their leadership. If they make the decision quickly that would be wonderful. If they choose not to do so, we will stay hard at this until we achieve the outcomes

I set forward''--the 12 demands.

So, basically, we are saying to the Iranian people, you have to change the entire foreign policy of your country or we are going to continue these, what you refer to as crippling sanctions. That seems rather inconsistent with where the President is and somewhat hard to achieve.

Mr. Hook. The President, if you look at what he has said over the last couple of years, he has taken a comprehensive approach to the entire range of threats that Iran presents. The nuclear threat is obviously the one that has the biggest consequence, OK, and so we prioritize that. That does not mean though that we are going to look the other way on the missile testing, the space launch vehicles, the missile proliferation, the regional aggression, the human rights abuses.

And I think one of the traps that the international community fell into was that as soon as you said Iran is in compliance with the deal, it ended the conversation and it obscured all of the ways that Iran has used the Iran nuclear deal to destabilize the Middle East. It made them stronger. It gave them more money. It has a weak inspections regime. It is silent on ICBMs. And it expires.

And so rather than wait for all of these things to come to pass in 10 years when Iran is stronger, we have pulled that forward. But I truly believe that everything we are seeing today is inevitable.

Mr. Malinowski. So if we fix the deal, the sanctions remain in place, is what you are saying, until everything else is fixed.

Mr. Hook. No. What I have said is that our sanctions have

two purposes, and I said this in my opening statement, to deny the regime the revenue it needs to run an expansionist foreign policy and to bring them back to the negotiating table.

Mr. Deutch. Thank you, Mr. Hook.

The votes have been called. Mr. Hook needs to get to the Senate, which leaves just enough time for Mr. Cicilline to be recognized.

Mr. Cicilline. Thank you. Thank you, Mr. Chairman.

Mr. Hook, I am very concerned that the actions taken by the Administration over the last 18 months have isolated the United States and brought us closer to war. Since we abandoned the JCPOA, there has not been any perceivable improvements in our position vis-a-vis Iran; in fact, the situation seems to have escalated considerably and we are now isolated from our allies on this point. And I fear that there are people within the Administration who see war with Iran as not only inevitable, but desirable, a position I cannot fathom due to the destruction it would cause.

I want to associate myself with my colleagues' remarks, particularly the chairman's, about the absence of an authorization to strike Iran under any existing AUMF or constitutional authorities. I am not asking you to pose an opinion. I think the text of the Constitution is quite clear.

And with respect to the notion that al-Qaida is the basis, the testimony that Secretary Pompeo made and where he tried to make that argument, it should be noted that in fact al-Qaida and its affiliates are Sunni extremists who consider Shia like Iran's government to be heretics. In a 2018 analysis of declassified documents obtained during the 2001 raid on Osama bin Laden's compound found that al-Qaida views Iran as a hostile entity. So this notion of that being authorization is clearly nonexistent.

But you said in your testimony that where you have made, our strategy is working. Based on what?

Mr. Hook. I am happy to go over it again with you. I will give you one example. Under the Iran nuclear deal, Iran's military spending reached record highs. In this administration, the first year it was down 10 percent and then starting in March it is down 29 percent.

Mr. Cicilline. But I guess maybe the question----

Mr. Hook. That is really significant.

Mr. Cicilline. The strategy is to achieve what objective? Maybe that is the question.

Mr. Hook. Our strategy is to get to a new and better deal that we would submit to the Senate as a treaty.

Mr. Cicilline. OK.

Mr. Hook. Which is a mistake that the prior administration--we think that the last deal should have been submitted to the Senate and they went around the Congress and they found the votes in the U.N. Security Council.

Mr. Cicilline. That is sort of rich on the sort of the moment that Iran is about to increase its capabilities to, in fact, develop a nuclear weapon as a result of us walking away from the agreement. But, you know, Secretary Pompeo in May 2018 stipulated a list of 12 behavior changes by Iran that would meet U.S. conditions for normalization. And he said at that time--well, I said at the time it looked like more of a wish list than any actual set of policy proposals or a strategy to achieve them.

But as of today, which of the 12 demands that were articulated by the Secretary have been successfully met in the intervening time period?

Mr. Hook. I do not have the 12 in front of me.

Mr. Cicilline. Well, have any of them been met? Let me make it easy for you.

Mr. Hook. Well, their--the regional aggression, we have weakened their proxies. We have also denied revenues to the regime to fund its missile program and its nuclear program. The regime is weaker today than it was, so it doesn't have the money that it used to, to spend on the areas that we are seeking change in. That is the nuclear missiles and regional aggression. They do not.

Mr. Cicilline. But has not your argument been all day and the Administration argument their behavior has gotten worse? Isn't that the whole point?

Mr. Hook. No. Iran, still, even with very little revenue, has an asymmetric capability that terrorists have. The costs of the 9/11 operation were quite inexpensive. That is the advantage that terrorism has today, its asymmetric advantage. And so it is the case that the regime has tens of billions of dollars of less revenue today than when it did before our sanctions took effect. That does not mean that we have eliminated their asymmetric threats.

Mr. Cicilline. And, Mr. Hook, do you believe, you know, one of the issues that Secretary Pompeo included in his Iran policy proposal related to human rights. And I am curious, do you believe that the President's embrace of authoritarian rulers such as North Korea's Kim Jong Un or Saudi Arabia's Mohammad bin Salman enhances or undercuts the human rights demands that Secretary Pompeo included in his proposal?

Mr. Hook. I can speak to Iran. And in the case of Iran he has coupled economic pressure with an off ramp for diplomacy. The Iranians have rejected that off ramp.

Mr. Cicilline. That is not my question. My question is, is the Administration, and the President's in particular, his embrace of authoritarian rulers with a gross disregard for human rights, does that make our demand for human rights concessions from the Iranians more likely, less likely, or no impact? It seems hard to reconcile the two. I am just wondering, as the person in charge of this effort----

Mr. Hook. Yes.

Mr. Cicilline [continuing]. Does that have some impact?

Mr. Hook. I do not share the premise of your question when I look at the sort of pressure that we have put in place on authoritarian regimes. And the President, I think, and I can only speak to Iran, has made very clear that while we do have very strong economic measures in place, he has encouraged Iran to call so that we can begin talks, and our Secretary of State has said without preconditions. And we are also doing this while we are highlighting the human rights abuses of this regime.

Mr. Cicilline. Thank you. My time is expired. Thank you, Mr. Chairman.

Mr. Deutch. Thank you, Mr. Cicilline.

Mr. Hook, thank you so much for appearing before our committee today. We appreciate it.

Thanks to the members who have come. Members will have five legislative days to submit questions or materials, additional materials for the record. And, without objection, the subcommittee is adjourned.

[Whereupon, at 1:42 p.m., the subcommittee was adjourned.]

APPENDIX

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Annex 7

22 U.S.C. 8772(a)(1) as amended by Section 1226 of NDAA 2020

22 USC 8772: Interests in certain financial assets of Iran
Text contains those laws in effect on May 7, 2020

From Title 22-FOREIGN RELATIONS AND INTERCOURSE
CHAPTER 94-IRAN THREAT REDUCTION AND SYRIA HUMAN RIGHTS
SUBCHAPTER V-MISCELLANEOUS
Jump To:

§8772. Interests in certain financial assets of Iran

(a) Interests in blocked assets

(1) In general

Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is-

(A) held by or for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked), or an asset that would be blocked if the asset were located in the United States, that is property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution, or to an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of execution, in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act, without regard to concerns relating to international comity.

(2) Court determination required

In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset pursuant to execution or attachment in aid of execution with respect to any judgments against Iran described in paragraph (1), the court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds-

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b) (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or

(B) a constitutionally protected interest in the assets described in subsection (b),

such assets shall be available only for execution or attachment in aid of execution to the

extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

(b) Financial assets described

The financial assets described in this section are the financial assets that are-

(1) identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings, as modified by court order dated June 27, 2008, and extended by court orders dated June 23, 2009, May 10, 2010, and June 11, 2010, so long as such assets remain restrained by court order; and

(2) identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 13 Civ. 9195 (LAP).

(c) Rules of construction

Nothing in this section shall be construed-

(1) to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than proceedings referred to in subsection (b); or

(2) to apply to assets other than the assets described in subsection (b), or to preempt State law, including the Uniform Commercial Code, except as expressly provided in subsection (a)(1).

(d) Definitions

In this section:

(1) Blocked asset

The term "blocked asset"-

(A) means any asset seized or frozen by the United States under section 4305(b) of title 50 or under section 202 or 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701 and 1702); and

(B) does not include property that-

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of the license has been specifically required by a provision of law other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) is property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the laws of the United States, and is being used exclusively for diplomatic or consular purposes.

(2) Financial asset; securities intermediary

The terms "financial asset" and "securities intermediary" have the meanings given those terms in the Uniform Commercial Code, but the former includes cash.

(3) Iran

The term "Iran" means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

(4) Person

(A) In general

The term "person" means an individual or entity.

(B) Entity

The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(5) Terrorist party

The term "terrorist party" has the meaning given that term in section 201(d) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note).

(6) United States

The term "United States" includes all territory and waters, continental, or insular, subject to the jurisdiction of the United States.

(Pub. L. 112–158, title V, §502, Aug. 10, 2012, 126 Stat. 1258 ; Pub. L. 116–92, div. A, title XII, §1226, Dec. 20, 2019, 133 Stat. 1645 .)

References in Text

This Act, referred to in subsec. (a)(2), is Pub. L. 112–158, Aug. 10, 2012, 126 Stat. 1214 , known as the Iran Threat Reduction and Syria Human Rights Act of 2012, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of this title and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (d)(1)(B)(i), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626 , which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The United Nations Participation Act of 1945, referred to in subsec. (d)(1)(B)(i), is act of Dec. 20, 1945, ch. 583, 59 Stat. 619 , which is classified to subchapter XVI (§287 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 287 of this title and Tables.

Section 201(d) of the Terrorism Risk Insurance Act of 2002, referred to in subsec. (d)(5), is section 201(d) of Pub. L. 107–297, which is set out as a note under section 1610 of Title 28, Judiciary and Judicial Procedure.

Codification

Section is comprised of section 502 of Pub. L. 112–158. Subsec. (e) of section 502 of Pub. L. 112–158 amended section 1610 of Title 28, Judiciary and Judicial Procedure, and amended section 201 of Pub. L. 107–297, set out as a note under section 1610 of Title 28.

Amendments

2019-Subsec. (a)(1). Pub. L. 116–92, §1226(1)(C), inserted ", or to an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of execution," after "in aid of execution" and ", without regard to concerns relating to international comity" after "resources for such an act" in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 116–92, §1226(1)(A), which directed substitution of "by or" for "in the United States" in subpar. (A), was executed by making the substitution for "in the United States" the first time appearing in subpar. (A) to reflect the probable intent of Congress.

Subsec. (a)(1)(B). Pub. L. 116–92, §1226(1)(B), inserted ", or an asset that would be blocked if the asset were located in the United States," after "unblocked)".

Subsec. (b). Pub. L. 116–92, §1226(2), substituted "that are-" and par. (1) designation for "that are" and "court order; and" for "court order." and added par. (2).

Annex 8

Munitions Control Act of 1947, Message from The President of the United States transmitting a proposal for legislation to control the exportation and importation of arms, ammunition, and implements of war, and related items, and for other purposes, 15 April 1947, U.S. Department of State Bulletin, Vol. XVI, No. 408, 27 April 1947

Excerpts: cover page, pp. 750-754 & 764

The Department of State

bulletin

VOL. XVI, No. 408
April 27, 1947

For complete contents see back cover

Control of Exportation and Importation of Arms, Ammunition, and Implements of War

THE PRESIDENT'S MESSAGE TO THE CONGRESS

To the Congress of the United States:

I transmit herewith a proposal for legislation to authorize supervision of the exportation of arms, ammunition, implements of war and related commodities, and the importation of arms, ammunition, and implements of war; to provide for the registration, under certain conditions, of manufacturers, exporters, importers, and certain dealers in munitions of war; and to provide for obtaining more adequate information concerning the international traffic in arms.[1] The principal purpose of this proposal is to supersede the present provisions of law in Section 12 of the Neutrality Act of November 4, 1939. For the reasons outlined below it is believed that the Congress will agree that this section of the present law is particularly ineffective in dealing with current problems and that the Congress will wish to take prompt action to enact a new law along the lines proposed herein.

Section 12 of the Neutrality Act provides for: the establishment of a National Munitions Control Board; the administration of the provisions of that section by the Secretary of State; the registration of those engaged in the business of manufacturing, importing or exporting arms, ammunition, and implements of war; the conditions under which export and import licenses may be issued; the reports which the National Munitions Control Board shall make to the Congress; and the determination by the President of what articles shall be considered arms, ammunition, and implements of war. Reports of the activities carried on by the Department of State pursuant to Section 12 for the years 1941 to 1946, inclusive, have been submitted to assist the Congress in its consideration of the legislation now suggested. Operations prior to 1941 are contained in the first to sixth Annual Reports of the National Munitions Control Board.

The proposed legislation contemplates continuing certain of the essential aspects of Section 12 of the Neutrality Act, particularly those pertaining to the administrative framework of the controls now exercised. However, it is different in its objective and it proposes a more flexible and efficient administration.

The present system of supervising this country's international traffic and trade in arms and munitions of war was conceived during a period of neutrality and with the view to remaining out of war. To achieve this end the successive Neutrality Acts of 1935, 1937, and 1939 were founded on the principle of impartiality toward all who would secure munitions from us regardless of their motives. As long as Section 12 of the Neutrality Act is in effect that requirement of impartiality is still the law and the Secretary of State must treat aggressor and aggrieved, peacemaker and troublemaker equally by granting every application for a license for the exportation of any arms, ammunition, or implements of war unless such action would be in violation of a treaty. *Such a provision of law is no longer consistent with this country's commitments and requirements. We*

[1] For a report to the President from the National Munitions Control Board, see H. Doc. 195, 80th Cong.

have committed ourselves to international cooperation through the United Nations. If this participation is to be fully effective this Government must have control over traffic in weapons which will permit us to act in accordance with our position in the United Nations and will be adaptable to changes in the international situation. Therefore, there must be new legal provisions enabling the exercise of discretion in the granting or rejecting of applications for export or import licenses for arms, ammunition, and implements of war and related items.

Weapons and implements of war are material weights in the balances of peace or war and we should not be legally bound to be indiscriminate in how they are placed in the scales. If war should ever again become imminent, it would be intolerable to find ourselves in our present position of being bound by our own legislation to give aid and support to any power which might later attack us. The proposed legislation is designed to permit in normal times of peace control over traffic in arms or other articles used to supply, directly or indirectly, a foreign military establishment, and in times of international crisis, to permit control over any article the export of which would affect the security interests of the United States.

The exercise of discretion necessarily requires a revision of the administration of the controls presently in operation. The suggested legislation provides for the exercise of discretion in the types of licenses which may be used, and in determining the activities which may be subject to registration. The new proposal differs from Section 12 in as much as it permits the issuance of various types of licenses designed to take into account under what circumstances and in what quantities the export of the articles covered by the proposed bill should be subject to control. The purpose of this procedure is to permit freedom of trade in items of a purely commercial nature.

With regard to the registration requirements it should be noted that under the present law anyone engaged in manufacturing, exporting or importing any of the articles defined as arms, ammunition or implements of war must register with the Secretary of State, whether the item handled by that person is a battleship or merely a .38 caliber pistol. Under the new proposal the President upon recommendation of the National Munitions Control Board may determine when the manufacture, exportation or importation of any designated arms, ammunition, and implements of war shall require registration. This will mean that consideration may be given to the relative military significance of the item handled.

Another important change provides for obtaining fuller information which will be made available to the Congress in the reports of the National Munitions Control Board. With a number of agencies of this Government actively concerned with the disposal of arms and related items, the proposed legislation will allow for the amalgamation of all such information into one comprehensive report.

In addition to the foregoing, the proposed legislation differs from Section 12 of the Neutrality Act by providing export controls over two additional categories; namely, (1) articles especially designed for or customarily used only in the manufacture of arms, ammunition and implements of war and (2) articles exported for use, directly or indirectly, by a foreign military establishment.

With regard to item (1) it is certainly unsound to endeavor to regulate traffic in arms and ammunition and permit a free flow of the special machinery and tools used in the production of those arms and ammunition. In the absence of such a provision those countries from whom munitions are withheld would soon seek and obtain the equipment with which to supply themselves.

In the interest of world peace articles supplying a foreign military establishment cannot be left free from Government supervision so far as exports are concerned. Prior to the last war there were no provisions for controlling articles supplying foreign military establishments. This condition must not be allowed to recur. The proposed legislation is consistent with the international trade policies I outlined a short time ago at Waco, Texas. It is designed to protect the security interests and to carry out the foreign policy of the United States.

There is one other aspect of the suggested legislation which warrants comment. At present there is no provision for supervising the activities of those persons who do not manufacture, import or export arms, ammunition, and implements of war, but who, as free agents, buy or sell these items for export, or who obtain commissions or fees on contracts for manufacture or exportation of such items. These brokers assume none of the respon-

sibilities of this important traffic, yet they promote it, often irresponsibly, and need only concern themselves with the profits to be found in the trade. It is scarcely fair to those who have the responsibility of carrying on what experience has shown to be a legitimate business, that such people should not be subject to regulation.

The international traffic in munitions and related items is a matter of major concern to us and to the other nations of the world. By such legislation as is now proposed for consideration by the Congress, the Government would be given powers essential for the safeguarding of its security interests in this international trade.

HARRY S. TRUMAN

THE WHITE HOUSE,
April 15, 1947.

The text of the proposed legislation submitted by the President with his message to the Congress follows

DRAFT OF A BILL

To control the exportation and importation of arms, ammunition, and implements of war, and related items, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:

SEC. 1. That there is hereby established a National Munitions Control Board (hereinafter referred to as the "Board"). The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce.

SEC. 2. Except as otherwise provided in this Act, the Administration of this Act is vested in the Secretary of State. The Secretary of State shall make such rules and regulations with regard to the enforcement of this Act as he may deem necessary to carry out its provisions; but the regulations, issued on June 2, 1942, by the Secretary of State (7 F.R. 4216; Title 22, Chapter II, Subchapter D of the Code of Federal Regulations) governing registration and licensing under section 12 of the joint resolution of Congress approved November 4, 1939, shall, until amended or revoked by the Secretary of State, have full force and effect as if issued under the authority of this Act.

CONTROL OF EXPORTS

SEC. 3. The President is hereby authorized to designate from time to time, upon the recommendation of the Board, such of the following as he determines must be subject to the export licensing requirements of section 4 of this Act in order to protect the security interests or carry out the foreign policy of the United States:

(a) Arms, ammunition, and implements of war and articles especially designed for, or customarily used only in, the manufacture of arms, ammunition, or implements of war.

(b) Articles which he determines are being, or are proposed to be, exported for use directly or indirectly by a foreign military establishment.

(c) In time of war or in the event of an emergency in international relations declared by Congress or declared in the manner now or hereafter authorized by law, any article the export of which would affect the security interests of the United States.

SEC. 4. (a) Without first having obtained a license therefor it shall be unlawful for any person to export, or attempt to export, from the United States to any other country any articles designated by the President under the authority of section 3 of this Act.

(b) The Secretary of State shall issue such licenses unless he determines that the proposed export would not be in accord with the foreign policy or the security interests of the United States and with the standards set forth in section 3 of this Act. Such licenses may be either general or specific. The Secretary of State is authorized to revoke any license under the same standards as govern the issuance of such license. A valid license issued under the authority of section 12 of the joint resolution of Congress approved November 4, 1939, shall be considered to be a valid license issued under this section, and shall remain valid, unless specifically cancelled or revoked by the Secretary of State, for the same period as if this Act had not been enacted.

(c) The Secretary of State shall develop such procedures for disseminating information as to the licensing policies to be followed under this section as he may deem necessary to enable manufacturers and exporters of articles designated under section 3 of this Act to plan legitimate commercial transactions, but he shall not be required to disclose any

information if in his opinion such disclosure would be contrary to the national security.

(d) In formulating the policies governing the licensing authority granted in this section, the Secretary of State shall act after consultation with the Board.

CONTROL OF IMPORTS

SEC. 5. The President is hereby authorized to designate from time to time, upon recommendation of the Board, those arms, ammunition, and implements of war which he determines must be subject to the import licensing requirements of section 6 of this Act in order to protect the security interest or carry out the foreign policy of the United States.

SEC. 6. (a) Without first having obtained a license therefor it shall be unlawful for any person to import, or attempt to import, into the United States from any other country any arms, ammunition, or implements of war designated by the President under the authority of section 5 of this Act.

(b) The Secretary of State shall issue such licenses unless he determines that the proposed import would not be in accord with the foreign policy or the security interests of the United States and with the standards set forth in section 5 of this Act. Such licenses may be either general or specific. The Secretary of State is authorized to revoke any license under the same standards as govern the issuance of such license. A valid license issued under the authority of section 12 of the joint resolution of Congress approved November 4, 1939, shall be considered to be a valid license issued under this section and shall remain valid, unless specifically cancelled or revoked by the Secretary of State, for the same period as if this Act had not been enacted.

(c) In formulating the policies governing the licensing authority granted in this section the Secretary of State shall act after consultation with the Board.

REGISTRATION

SEC. 7. The President is hereby authorized to designate from time to time, upon the recommendation of the Board, those arms, ammunition and implements of war the manufacture, exportation or importation of which he determines must be subject to the registration requirements of sections 8 and 9 of this Act in order to protect the security interests or carry out the foreign policy of the United States.

SEC. 8. (a) Every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war designated by the President under the authority of section 7 of this Act, shall register with the Secretary of State, his name or business name, principal place or places of business in the United States and in any foreign country, the names of his agents or sales representatives in any foreign country, a list of the arms, ammunition, and implements of war manufactured, exported, or imported by him and such other pertinent information as the Secretary of State may prescribe in the regulations issued under the authority of section 2 of this Act. Every person required to register under this section shall notify the Secretary of State of any change in the information required under this section.

(b) Every person required to register under the provisions of section 8 (a) of this Act shall pay a registration fee of $100. Upon receipt of the information required under the provisions of section 8 (a), and of the registration fee, the Secretary of State shall issue to such person a registration certificate valid for five years, which shall be renewable for further periods of five years upon the payment for each renewal of a fee of $100; but certificates of registration issued under the authority of section 12 of the joint resolution of Congress approved November 4, 1939, shall, without payment of any additional fee, be considered to be valid certificates of registration under this Act and shall remain valid for the same period as if this Act had not been enacted.

(c) Any person, who, having registered under the provisions of section 8 (a), ceases to engage in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war, may so notify the Secretary of State, and upon surrender of his certificate of registration there shall be refunded to him the sum of $20 for each full year remaining in the period of validity of his certificate.

(d) All persons required to register under section 8 (a) shall maintain, subject to the inspection of the Secretary of State, or any person or persons designated by him, such permanent records of transactions pertaining to the manufacture, expor-

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tation or importation of arms, ammunition, or implements of war as the Secretary of State shall prescribe by regulations issued pursuant to the authority of section 2 of this Act.

SEC. 9. (a) Every person not required to register under the provisions of section 8 (a), who is engaged or engages in buying or selling for export or import or offering to buy or sell for export or import any arms, ammunition, or implements of war, the manufacture of which requires registration under the provisions of section 8 (a) or for the export or import of which a license is required under the provisions of sections 4 (a) or 6 (a), shall register with the Secretary of State his name or business name and his place or places of business and such other information concerning his business as may be required by regulations issued by the Secretary of State under the authority of section 2. The provisions of this section shall not apply to the representatives, agents, officers or employees of persons required to register under section 8 (a) while acting as such representatives, agents, officers or employees.

(b) Every person required to register under the provisions of section 9 (a) shall pay a registration fee of $100. Upon receipt of the information required in section 9 (a) and of the fee, the Secretary of State shall register such person. Such registration shall be valid for five years, and shall be renewable for further periods of five years upon the payment for each renewal of a fee of $100.

(c) All persons required to register under section 9 (a) shall maintain, subject to the inspection of the Secretary of State, or any person or persons designated by him, such permanent records of the activities which require their registration as the Secretary of State shall prescribe by regulations issued pursuant to the authority of section 2 of this Act.

GENERAL

SEC. 10. The Board shall make a report to Congress on March 1 of each year, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the control of the trade in arms, ammunition, and implements of war, and other articles to which this Act relates. The Board shall include in such reports a list of all persons registered under the provisions of this Act, full information concerning the licenses issued hereunder, and such other information as the President may from time to time direct any officer, executive department, or independent establishment of the Government to furnish the Board; but the Board may omit any information the revelation of which it may deem contrary to the interest of the national defense or security.

SEC. 11. (a) In every case of the violation of any of the provisions of this Act or of any rules or regulations issued pursuant thereto such violator or violators, upon conviction, shall be fined not more than $10,000.00 or imprisoned not more than two years, or both.

(b) Any arms, ammunition, or implements of war, or other articles, exported or imported or the export or import of which is attempted in violation of the provisions of this Act shall be subject to seizure and forfeiture in accordance with the provisions of sections 1 to 8, inclusive, of Title VI of the Espionage Act of June 15, 1917 as amended (22 U. S. C. A. Secs. 401–408).

(c) In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no such arms, ammunition, or implements of war shall be sold but they shall be delivered to the Secretary of War; and the Secretary of War may order the forfeited articles destroyed or may retain them for the use of the armed forces of the United States.

SEC. 12. For the purposes of this Act, the term "United States" includes the several States and Territories, the insular possessions of the United States, the Canal Zone, and the District of Columbia; the term "person" includes a partnership, company, association, or corporation, as well as a natural person.

SEC. 13. If any of the provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 14. Section 12 of the joint resolution of Congress approved November 4, 1939 (54 Stat. 10; 22 U.S.C. 452) and Senate Joint Resolution 124 of January 26, 1942 (Public Law 414, 77th Cong., 56 Stat. 19) are hereby repealed; but offenses committed and penalties or liabilities in-

(Continued on page 764)

agreed. The other part of our preparation for this meeting has consisted of steps leading up to definitive negotiations on tariffs and other barriers to trade. It will be recalled that this committee had agreed at its meeting in London upon the procedures that were to be followed at each stage of this work.

At the first stage each member of the committee was to transmit to each other member a preliminary list of concessions which it proposes to request. This we have done.

At the second stage, each member should submit a schedule of the proposed concessions which it would be prepared to grant to all other members in the light of the concessions it would have requested from each of them. This we are now prepared to do. The basis of these negotiations is set forth in article 24 of the charter which provides that tariff negotiations shall be on a reciprocal and mutually advantageous basis. This means that no country would be expected to grant concessions unilaterally without action by others or to grant concessions to others which are not adequately counterbalanced by concessions in return. It is on this basis that the United States is now prepared to, as soon as the committee is ready, in accordance with the procedure upon which it has agreed to, enter into actual negotiations whether they be on the text of the charter or on the details of trade concessions. We shall be ready to participate. It is our hope that these negotiations will be initiated at the earliest possible moment and carried forward with the greatest possible dispatch. We realize of course that the magnitude and the complexity of this undertaking are without precedent, but we know too that this committee has already earned for itself a reputation for quiet industry, steady progress, and the prompt completion of an appointed task—a reputation that gives ground for confidence of achievement in the weeks that lie ahead.

Arms, Ammunition, and Implements of War—*Continued from page 754*

curred under section 12 of the joint resolution of November 4, 1939, prior to the effective date of this Act may be prosecuted and punished, and suits and proceedings for violations of section 12 of the joint resolution of November 4, 1939, or of any rule or regulation issued pursuant thereto may be commenced and prosecuted in the same manner and with the same effect as if that section of the joint resolution had not been repealed.

SEC. 15. The functions conferred by this Act shall be excluded from the operation of the Administrative Procedure Act (Public Law 404, 79th Cong.), except as to the requirements of section 3 thereof relating to public information.

SEC. 16. There is hereby authorized to be appropriated to the Department of State, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary for the purpose of carrying into effect the provisions of this Act.

SEC. 17. This Act may be cited as the "Munitions Control Act of 1947".

U.S. Requests Reinstatement of Credentials for Correspondent in Spain

[Released to the press April 14]

On April 2, 1947, Francis E. McMahon, correspondent in Spain for the New York *Post*, was notified in Seville by representatives of the Subsecretariat of Popular Education of the withdrawal of his press credentials.

On April 3, 1947, Philip W. Bonsal, U.S. Chargé d'Affaires in Madrid, informed the Spanish Foreign Office of what had occurred and requested that an investigation be made of the circumstances surrounding the withdrawal of Dr. McMahon's press credentials. On April 5, 1947, the Spanish Foreign Office confirmed the withdrawal of Dr. McMahon's press credentials. On this occasion Mr. Bonsal made an energetic oral protest which was presented in written form on April 8. On April 11, 1947, Spanish Foreign Minister Martin A. Artajo informed Mr. Bonsal that the Spanish Minister of Education had decided not to renew the press credentials of Dr. McMahon. The withdrawal of credentials was said not to be due to any one single story. The Foreign Minister said that the action was taken in view of the "tendencious and often factually inexact" nature of Dr. McMahon's articles. Mr. Bonsal had previously been informed that the reason for the withdrawal of the credentials was that Dr. McMahon had "failed to meet the test of indispensable objectivity."

Mr. Bonsal contrasted this treatment with the

Annex 9

U.S. Department of Treasury, *Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism*, 25 October 2007

Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism

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The U.S. Government is taking several major actions today to counter Iran's bid for nuclear capabilities and support for terrorism by exposing Iranian banks, companies and individuals that have been involved in these dangerous activities and by cutting them off from the U.S. financial system.

Today, the Department of State designated under Executive Order 13382 two key Iranian entities of proliferation concern: the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps) and the Ministry of Defense and Armed Forces Logistics (MODAFL). Additionally, the Department of the Treasury designated for proliferation activities under E.O. 13382 nine IRGC-affiliated entities and five IRGC-affiliated individuals as derivatives of the IRGC, Iran's state-owned Banks Melli and Mellat, and three individuals affiliated with Iran's Aerospace Industries Organization (AIO).

The Treasury Department also designated the IRGC-Qods Force (IRGC-QF) under E.O. 13224 for providing material support to the Taliban and other terrorist organizations, and Iran's state-owned Bank Saderat as a terrorist financier.

Elements of the IRGC and MODAFL were listed in the Annexes to UN Security Council Resolutions 1737 and 1747. All UN Member States are required to freeze the assets of entities and individuals listed in the Annexes of those resolutions, as well as assets of entities owned or controlled by them, and to prevent funds or economic resources from being made available to them.

The Financial Action Task Force, the world's premier standard-setting body for countering terrorist financing and money laundering, recently highlighted the threat posed by Iran to the international financial system. FATF called on its members to advise institutions dealing with Iran to seriously weigh the risks

resulting from Iran's failure to comply with international standards. Last week, the Treasury Department issued a warning to U.S. banks setting forth the risks posed by Iran. (For the text of the Treasury Department statement see: http://www.fincen.gov /guidance_fi_increasing_mlt_iranian.pdf.) Today's actions are consistent with this warning, and provide additional information to help financial institutions protect themselves from deceptive financial practices by Iranian entities and individuals engaged in or supporting proliferation and terrorism.

Effect of Today's Actions

As a result of our actions today, all transactions involving any of the designees and any U.S. person will be prohibited and any assets the designees may have under U.S. jurisdiction will be frozen. Noting the UN Security Council's grave concern over Iran's nuclear and ballistic missile program activities, the United States also encourages all jurisdictions to take similar actions to ensure full and effective implementation of UN Security Council Resolutions 1737 and 1747.

Today's designations also notify the international private sector of the dangers of doing business with three of Iran's largest banks, as well as the many IRGC- affiliated companies that pervade several basic Iranian industries.

Proliferation Finance – Executive Order 13382 Designations

E.O. 13382, signed by the President on June 29, 2005, is an authority aimed at freezing the assets of proliferators of weapons of mass destruction and their supporters, and at isolating them from the U.S. financial and commercial systems. Designations under the Order prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction.

The Islamic Revolutionary Guard Corps (IRGC): Considered the military vanguard of Iran, the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps) is composed of five branches (Ground Forces, Air Force, Navy, Basij militia, and Qods Force special operations) in addition to a counterintelligence directorate and representatives of the Supreme Leader. It runs prisons, and has numerous economic interests involving defense production, construction, and the oil industry. Several of the IRGC's leaders have been sanctioned under UN Security Council Resolution 1747.

The IRGC has been outspoken about its willingness to proliferate

ballistic missiles capable of carrying WMD. The IRGC's ballistic missile inventory includes missiles, which could be modified to deliver WMD. The IRGC is one of the primary regime organizations tied to developing and testing the Shahab-3. The IRGC attempted, as recently as 2006, to procure sophisticated and costly equipment that could be used to support Iran's ballistic missile and nuclear programs.

Ministry of Defense and Armed Forces Logistics (MODAFL): The Ministry of Defense and Armed Forces Logistics (MODAFL) controls the Defense Industries Organization, an Iranian entity identified in the Annex to UN Security Council Resolution 1737 and designated by the United States under E.O. 13382 on March 30, 2007. MODAFL also was sanctioned, pursuant to the Arms Export Control Act and the Export Administration Act, in November 2000 for its involvement in missile technology proliferation activities.

MODAFL has ultimate authority over Iran's Aerospace Industries Organization (AIO), which was designated under E.O. 13382 on June 28, 2005. The AIO is the Iranian organization responsible for ballistic missile research, development and production activities and organizations, including the Shahid Hemmat Industries Group (SHIG) and the Shahid Bakeri Industries Group (SBIG), which were both listed under UN Security Council Resolution 1737 and designated under E.O. 13382. The head of MODAFL has publicly indicated Iran's willingness to continue to work on ballistic missiles. Defense Minister Brigadier General Mostafa Mohammad Najjar said that one of MODAFL's major projects is the manufacturing of Shahab-3 missiles and that it will not be halted. MODAFL representatives have acted as facilitators for Iranian assistance to an E.O. 13382- designated entity and, over the past two years, have brokered a number of transactions involving materials and technologies with ballistic missile applications.

Bank Melli, its branches, and subsidiaries: Bank Melli is Iran's largest bank. Bank Melli provides banking services to entities involved in Iran's nuclear and ballistic missile programs, including entities listed by the U.N. for their involvement in those programs. This includes handling transactions in recent months for Bank Sepah, Defense Industries Organization, and Shahid Hemmat Industrial Group. Following the designation of Bank Sepah under UNSCR 1747, Bank Melli took precautions not to identify Sepah in transactions. Through its role as a financial conduit, Bank Melli has facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programs. In doing so, Bank Melli has provided a range of financial services on behalf of Iran's nuclear and missile industries, including opening letters of credit and maintaining accounts.

Bank Melli also provides banking services to the IRGC and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.

Bank Mellat, its branches, and subsidiaries: Bank Mellat provides banking services in support of Iran's nuclear entities, namely the Atomic Energy Organization of Iran (AEOI) and Novin Energy Company. Both AEOI and Novin Energy have been designated by the United States under E.O. 13382 and by the UN Security Council under UNSCRs 1737 and 1747. Bank Mellat services and maintains AEOI accounts, mainly through AEOI's financial conduit, Novin Energy. Bank Mellat has facilitated the movement of millions of dollars for Iran's nuclear program since at least 2003. Transfers from Bank Mellat to Iranian nuclear-related companies have occurred as recently as this year.

IRGC-owned or -controlled companies: Treasury is designating the companies listed below under E.O. 13382 on the basis of their relationship to the IRGC. These entities are owned or controlled by the IRGC and its leaders. The IRGC has significant political and economic power in Iran, with ties to companies controlling billions of dollars in business and construction and a growing presence in Iran's financial and commercial sectors. Through its companies, the IRGC is involved in a diverse array of activities, including petroleum production and major construction projects across the country. In 2006, Khatam al-Anbiya secured deals worth at least $7 billion in the oil, gas, and transportation sectors, among others.

- Khatam al-Anbya Construction Headquarters
- Oriental Oil Kish
- Ghorb Nooh
- Sahel Consultant Engineering
- Ghorb-e Karbala
- Sepasad Engineering Co
- Omran Sahel
- Hara Company
- Gharargahe Sazandegi Ghaem

IRGC Individuals: Treasury is designating the individuals below under E.O 13382 on the basis of their relationship to the IRGC. One of the five is listed on the Annex of UNSCR 1737 and the other four are listed on the Annex of UNSCR 1747 as key IRGC individuals.

- General Hosein Salimi, Commander of the Air Force, IRGC
- Brigadier General Morteza Rezaie, Deputy Commander of the IRGC
- Vice Admiral Ali Akhbar Ahmadian, Most recently former Chief of the IRGC Joint Staff
- Brigadier Gen. Mohammad Hejazi, Most recently former Commander of Bassij resistance force
- Brigadier General Qasem Soleimani, Commander of the Qods Force

Other Individuals involved in Iran's ballistic missile programs: E.O. 13382 derivative proliferation designation by Treasury of each of the individuals listed below for their relationship to the Aerospace Industries Organization, an entity previously designated under E.O. 13382. Each individual is listed on the Annex of UNSCR 1737 for being involved in Iran's ballistic missile program.

- Ahmad Vahid Dastjerdi, Head of the Aerospace Industry Organization (AIO)
- Reza-Gholi Esmaeli, Head of Trade & International Affairs Dept., AIO
- Bahmanyar Morteza Bahmanyar, Head of Finance & Budget Department, AIO

Support for Terrorism -- Executive Order 13224 Designations

E.O. 13224 is an authority aimed at freezing the assets of terrorists and their supporters, and at isolating them from the U.S. financial and commercial systems. Designations under the E.O. prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction.

IRGC-Qods Force (IRGC-QF): The Qods Force, a branch of the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps), provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC).

The Qods Force is the Iranian regime's primary instrument for providing lethal support to the Taliban. The Qods Force provides weapons and financial support to the Taliban to support anti-U.S. and anti-Coalition activity in Afghanistan. Since at least 2006, Iran has arranged frequent shipments of small arms and associated ammunition, rocket propelled grenades, mortar rounds, 107mm rockets, plastic explosives, and probably man-portable defense systems to the Taliban. This support contravenes Chapter VII UN Security Council obligations. UN Security Council resolution 1267

established sanctions against the Taliban and UN Security Council resolutions 1333 and 1735 imposed arms embargoes against the Taliban. Through Qods Force material support to the Taliban, we believe Iran is seeking to inflict casualties on U.S. and NATO forces.

The Qods Force has had a long history of supporting Hizballah's military, paramilitary, and terrorist activities, providing it with guidance, funding, weapons, intelligence, and logistical support. The Qods Force operates training camps for Hizballah in Lebanon's Bekaa Valley and has reportedly trained more than 3,000 Hizballah fighters at IRGC training facilities in Iran. The Qods Force provides roughly $100 to $200 million in funding a year to Hizballah and has assisted Hizballah in rearming in violation of UN Security Council Resolution 1701.

In addition, the Qods Force provides lethal support in the form of weapons, training, funding, and guidance to select groups of Iraqi Shi'a militants who target and kill Coalition and Iraqi forces and innocent Iraqi civilians.

Bank Saderat, its branches, and subsidiaries: Bank Saderat, which has approximately 3200 branch offices, has been used by the Government of Iran to channel funds to terrorist organizations, including Hizballah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad. For example, from 2001 to 2006, Bank Saderat transferred $50 million from the Central Bank of Iran through its subsidiary in London to its branch in Beirut for the benefit of Hizballah fronts in Lebanon that support acts of violence. Hizballah has used Bank Saderat to send money to other terrorist organizations, including millions of dollars on occasion, to support the activities of Hamas. As of early 2005, Hamas had substantial assets deposited in Bank Saderat, and, in the past year, Bank Saderat has transferred several million dollars to Hamas.

REPORTS

- Treasury and State Department Iran Designations Identifier

Annex 10

OFAC, *Final Rule amending the Iranian Transactions Regulations, 4 November 2008*, U.S. Federal Register Vol. 73, No. 218 of 10 November 2008

Approved: October 28, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–26676 Filed 11–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") is amending the Iranian Transactions Regulations, to narrow the scope of existing section by revoking an authorization previously granted to U.S. depository institutions to process "U-turn" transfers, and to make certain other conforming and technical changes.

DATES: *Effective Date:* November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control ("OFAC") are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax on-demand service, tel.: 202/622–0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), implement a series of Executive Orders that began with Executive Order 12613 of October 30, 1987, issued pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that order, after finding, *inter alia,* that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Section § 560.516 of the ITR contains authorizations with respect to certain transactions that are processed by U.S. depository institutions, as well as by U.S. registered brokers or dealers in securities. OFAC now is amending § 560.516 to narrow the scope of authority provided in paragraph (a) of this section. As amended, paragraph (a) of § 560.516 authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, only if the transfer meets one of the conditions set forth in the sub-paragraphs to paragraph (a) and does not involve debiting or crediting an Iranian account, as defined in § 560.320 of the ITR. Prior to this amendment, sub-paragraph (a)(1) authorized such transactions when the transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank. This is commonly referred to as the "U-turn" authorization. It is so termed because it is initiated offshore as a dollar-denominated transaction by order of a foreign bank's customer; it then becomes a transfer from a correspondent account held by a domestic bank for the foreign bank to a correspondent account held by a domestic bank for another foreign bank; and it ends up offshore as a transfer to a dollar-denominated account of the second foreign bank's customer. OFAC now is narrowing the scope of authority provided by paragraph (a) of § 560.516 by deleting sub-paragraph (a)(1) and, thereby, revoking the authorization for "U-turn" transfers.

The reasons OFAC is revoking this authorization include the need to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks. This threat was highlighted in March of 2008 when the United Nations Security Council adopted Resolution 1803, which calls upon all states "to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran...in order to avoid such activities contributing to the proliferation [of] sensitive nuclear activities, or to the development of nuclear weapon delivery systems * * *." Moreover, on October 16, 2008, the Financial Action Task Force ("FATF"), the world's premier standard-setting body for anti-money laundering and counter-terrorist financing ("AML/CFT"), warned for the fourth time about the risks posed to the international financial system by continuing deficiencies in Iran's AML/CFT regime, and in particular emphasized Iran's lack of effort in addressing the risk of terrorist financing. The FATF called on all countries to strengthen preventive measures to protect their financial systems from the risk.

As a result of this amendment, effective November 10, 2008, U.S. depository institutions no longer will be allowed to process "U-turn" transfers involving Iran, thereby precluding transfers designed to dollarize transactions through the U.S. financial system for the direct or indirect benefit of Iranian banks or other persons in Iran or the Government of Iran. OFAC is revising and republishing § 560.516 of the ITR in its entirety because, in addition to removing sub-paragraph (a)(1), OFAC also is amending this section to delete references to outdated provisions and make other minor technical changes. OFAC also is revising § 560.405 and § 560.532 of the ITR to make certain conforming changes by deleting references to outdated provisions.

Public Participation

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory

Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITR are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation of part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—[Amended]

■ 2. Revise § 560.405 to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Iranian governmental entity or involving a debit or credit to an Iranian account not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there;

(c) Distribution or leasing in Iran of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Iran;

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Iran or the Government of Iran (see § 560.532); and

(e) Letter of credit services relating to transactions authorized in § 560.534. See § 560.535(a).

Subpart E—[Amended]

■ 3. Revise § 560.516 to read as follows:

§ 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(2) The transfer arises from an underlying transaction that is not prohibited by this part, such as a non-commercial remittance to or from Iran (e.g., a family remittance not related to a family-owned enterprise); or

(3) The transfer arises from an underlying transaction that is exempted from regulation pursuant to § 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), such as an exportation to Iran or importation from Iran of information and informational materials, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering.

(b) United States registered brokers or dealers in securities are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the conditions set forth in paragraph (a) of this section and does not involve the debiting or crediting of an Iranian account.

(c) Before a United States depository institution or a United States registered broker or dealer in securities initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States depository institution or United States registered broker or dealer in securities must determine that the underlying transaction is not prohibited by this part.

(d) Pursuant to the prohibitions contained in § 560.208, a United States depository institution or a United States registered broker or dealer in securities may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution or U.S. registered broker or dealer in securities.

(e) This section does not authorize transactions with respect to property blocked pursuant to part 535.

■ 4. Revise paragraph (b) of § 560.532 to read as follows:

§ 560.532 Payment for and financing of exports and reexports of commercial commodities, medicine, and medical devices.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. See § 501.801(b) of this chapter for specific licensing procedures.

* * * * *

Dated: November 4, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–26642 Filed 11–6–08; 11:15 am]

BILLING CODE 4811–55–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1090]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern #7 Railroad Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate structural repairs.

Annex 11

VETO—S.J. RES. 7 (PM 10), Message from the President of The United States, 29 April 2019

116th Congress, 1st Session - - - - - - - - - - - - - - - Senate Document 116–4

VETO—S.J. RES. 7
(PM 10)

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S.J. RES. 7, A JOINT RESOLUTION TO DIRECT THE REMOVAL OF UNITED STATES ARMED FORCES FROM HOSTILITIES IN THE REPUBLIC OF YEMEN THAT HAVE NOT BEEN AUTHORIZED BY CONGRESS, RECEIVED DURING ADJOURNMENT OF THE SENATE ON APRIL 17, 2019

APRIL 29, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
89–011 WASHINGTON : 2019

To the Senate of the United States:

I am returning herewith without my approval S.J. Res. 7, a joint resolution that purports to direct the President to remove United States Armed Forces from hostilities in or affecting the Republic of Yemen, with certain exceptions. This resolution is an unnecessary, dangerous attempt to weaken my constitutional authorities, endangering the lives of American citizens and brave service members, both today and in the future.

This joint resolution is unnecessary because, apart from counterterrorism operations against al-Qa'ida in the Arabian Peninsula and ISIS, the United States is not engaged in hostilities in or affecting Yemen. For example, there are no United States military personnel in Yemen commanding, participating in, or accompanying military forces of the Saudi-led coalition against the Houthis in hostilities in or affecting Yemen.

Since 2015, the United States has provided limited support to member countries of the Saudi-led coalition, including intelligence sharing, logistics support, and, until recently, in-flight refueling of non-United States aircraft. All of this support is consistent with applicable Arms Export Control Act authorities, statutory authorities that permit the Department of Defense to provide logistics support to foreign countries, and the President's constitutional power as Commander in Chief. None of this support has introduced United States military personnel into hostilities.

We are providing this support for many reasons. First and foremost, it is our duty to protect the safety of the more than 80,000 Americans who reside in certain coalition countries that have been subject to Houthi attacks from Yemen. Houthis, supported by Iran, have used missiles, armed drones, and explosive boats to attack civilian and military targets in those coalition countries, including areas frequented by American citizens, such as the airport in Riyadh, Saudi Arabia. In addition, the conflict in Yemen represents a "cheap" and inexpensive way for Iran to cause trouble for the United States and for our ally, Saudi Arabia.

S.J. Res. 7 is also dangerous. The Congress should not seek to prohibit certain tactical operations, such as in-flight refueling, or require military engagements to adhere to arbitrary timelines. Doing so would interfere with the President's constitutional authority as Commander in Chief of the Armed Forces, and could endanger our service members by impairing their ability to efficiently and effectively conduct military engagements and to withdraw in an orderly manner at the appropriate time.

The joint resolution would also harm the foreign policy of the United States. Its efforts to curtail certain forms of military support would harm our bilateral relationships, negatively affect our ongoing efforts to prevent civilian casualties and prevent the spread of terrorist organizations such as al-Qa'ida in the Arabian

Peninsula and ISIS, and embolden Iran's malign activities in Yemen.

We cannot end the conflict in Yemen through political documents like S.J. Res. 7. Peace in Yemen requires a negotiated settlement. Unfortunately, inaction by the Senate has left vacant key diplomatic positions, impeding our ability to engage regional partners in support of the United Nations-led peace process. To help end the conflict, promote humanitarian and commercial access, prevent civilian casualties, enhance efforts to recover American hostages in Yemen, and defeat terrorists that seek to harm the United States, the Senate must act to confirm my nominees for many critical foreign policy positions.

I agree with the Congress about the need to address our engagements in foreign wars. As I said in my State of the Union address in February, great nations do not fight endless wars. My Administration is currently accelerating negotiations to end our military engagement in Afghanistan and drawing down troops in Syria, where we recently succeeded in eliminating 100 percent of the ISIS caliphate. Congressional engagement in those endeavors would be far more productive than expending time and effort trying to enact this unnecessary and dangerous resolution that interferes with our foreign policy with respect to Yemen.

For these reasons, it is my duty to return S.J. Res. 7 to the Senate without my approval.

DONALD J. TRUMP.

THE WHITE HOUSE, *April 16, 2019.*

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Annex 12

VETO—S.J. RES. 38 (PM 25) Message from the President of The United States, 24 July 2019

116th Congress, 1st Session - - - - - - - - - - - - - - - Senate Document 116–9

VETO—S.J. RES. 38
(PM 25)

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S.J. RES. 38, A JOINT RESOLUTION PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE PROPOSED EXPORT TO THE KINGDOM OF SAUDI ARABIA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND OF CERTAIN DEFENSE ARTICLES AND SERVICES

JULY 24, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
37–199 WASHINGTON : 2019

To the Senate of the United States:

I am returning herewith without my approval S.J. Res. 38, a joint resolution that would prohibit the issuance of export licenses for the proposed transfer of defense articles, defense services, and technical data to support the manufacture of the Aurora Fuzing System for the Paveway IV Precision Guided Bomb Program in regard to the Kingdom of Saudi Arabia and the United Kingdom of Great Britain and Northern Ireland. This resolution would weaken America's global competitiveness and damage the important relationships we share with our allies and partners.

In particular, S.J. Res. 38 would prohibit the issuance of export licenses for the proposed transfer of defense articles, defense services, and technical data for the manufacturing of the Aurora Fuzing System for the Paveway IV Precision Guided Bomb Program. The misguided licensing prohibition in the joint resolution directly conflicts with the foreign policy and national security objectives of the United States, which include strengthening defense alliances with friendly countries throughout the world, deepening partnerships that preserve and extend our global influence, and enhancing our competitiveness in key markets. Apart from negatively affecting our bilateral relationships with Saudi Arabia and the United Kingdom, the joint resolution would hamper the ability of the United States to sustain and shape critical security cooperation activities. S.J. Res. 38 would also damage the credibility of the United States as a reliable partner by signaling that we are willing to abandon our partners and allies at the very moment when threats to them are increasing.

The United States is providing the licenses that the joint resolution seeks to prohibit for many reasons. First and foremost, it is our solemn duty to protect the safety of the more than 80,000 United States citizens who reside in Saudi Arabia and who are imperiled by Houthi attacks from Yemen. The Houthis, supported by Iran, have attacked civilian and military facilities using missiles, armed drones, and explosive boats, including in areas frequented by United States citizens, such as the airport in Riyadh, Saudi Arabia. Second, the joint resolution would degrade Saudi Arabia's military preparedness and ability to protect its sovereignty, directly affecting its ability to defend United States military personnel hosted there. Third, Saudi Arabia is a bulwark against the malign activities of Iran and its proxies in the region, and the licenses the joint resolution would prohibit enhance Saudi Arabia's ability to deter and defend against these threats.

In addition, S.J. Res. 38 would negatively affect our NATO Allies and the transatlantic defense industry. It could, for example, produce unintended consequences for defense procurement and interoperability with and between our partners. It could also create diplomatic and security opportunities for our adversaries to exploit.

Finally, by restricting the ability of our partners to produce and purchase precision-guided munitions, S.J. Res. 38 would likely prolong the conflict in Yemen and deepen the suffering it causes. By undermining bilateral relationships of the United States and impeding our ability to support key partners at a critical time, the joint resolution would harm—not help—efforts to end the conflict in Yemen. And without precision-guided munitions, more—not fewer—civilians are likely to become casualties of the conflict. While I share concerns that certain Members of Congress have expressed about civilian casualties of this conflict, the United States has taken and will continue to take action to minimize such casualties, including training and advising the Saudi-led Coalition forces to improve their targeting processes.

The United States is very concerned about the conflict's toll on innocent civilians and is working to bring the conflict in Yemen to an end. But we cannot end it through ill-conceived and time-consuming resolutions that fail to address its root causes. Rather than expend time and resources on such resolutions, I encourage the Congress to direct its efforts toward supporting our work to achieve peace through a negotiated settlement to the conflict in Yemen.

For these reasons, it is my duty to return S.J. Res. 38 to the Senate without my approval.

Donald J. Trump.

THE WHITE HOUSE, *July 24, 2019.*

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Annex 13

VETO—S.J. RES. 37 (PM 24) Message from the President of The United States, 24 July 2019

116th Congress, 1st Session - - - - - - - - - - - - - - - Senate Document 116–8

VETO—S.J. RES. 37
(PM 24)

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S.J. RES. 37, A JOINT RESOLUTION PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE PROPOSED EXPORT TO THE UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE REPUBLIC OF FRANCE OF CERTAIN DEFENSE ARTICLES AND SERVICES

JULY 24, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
37–198 WASHINGTON : 2019

To the Senate of the United States:

I am returning herewith without my approval S.J. Res. 37, a joint resolution that would prohibit the issuance of export licenses for certain defense articles, defense services, and technical data to support the transfer of Paveway II kits to the United Arab Emirates (UAE), the United Kingdom of Great Britain and Northern Ireland, and the Republic of France. This resolution would weaken America's global competitiveness and damage the important relationships we share with our allies and partners.

In particular, S.J. Res. 37 would prohibit the issuance of export licenses for Paveway II kits to the UAE, the United Kingdom, and France. The misguided licensing prohibitions in the joint resolution directly conflict with the foreign policy and national security objectives of the United States, which include strengthening defense alliances with friendly countries throughout the world, deepening partnerships that preserve and extend our global influence, and enhancing our competitiveness in key markets. Apart from negatively affecting our bilateral relationships with the UAE, the United Kingdom, and France, the joint resolution would hamper the ability of the United States to sustain and shape critical security cooperation activities with those partners. S.J. Res. 37 would also damage the credibility of the United States as a reliable partner by signaling that we are willing to abandon our partners and allies at the very moment when threats to them are increasing.

The United States is providing the licenses that the joint resolution seeks to prohibit for many reasons. First and foremost, it is our solemn duty to protect the safety of the more than 80,000 United States citizens who reside in Saudi Arabia and are imperiled by Houthis attacking from Yemen using missiles, armed drones, and explosive boats. The UAE is an important part of the Saudi-led Coalition that helps protect Americans from these Iranian-supported Houthi attacks on civilian and military facilities, including those located in areas frequented by United States citizens like the airport in Riyadh, Saudi Arabia. Second, the joint resolution would degrade the UAE's military preparedness and ability to protect its sovereignty, directly affecting its ability to defend the thousands of United States military personnel hosted there. Third, the UAE is a bulwark against the malign activities of Iran and its proxies in the region. It is also an active partner with the United States in combatting terrorism in Yemen and elsewhere. The licenses the joint resolution would prohibit enhance our partner's ability to deter and defend against these threats.

In addition, S.J. Res. 37 would negatively affect our NATO Allies and the transatlantic defense industry. It could, for example, produce unintended consequences for defense procurement and interoperability with and between our partners. It could also create diplomatic and security opportunities for our adversaries to exploit.

(1)

Finally, by restricting the ability of our partners to produce and purchase precision-guided munitions, S.J. Res. 37 would likely prolong the conflict in Yemen and deepen the suffering it causes. By undermining bilateral relationships of the United States and impeding our ability to support key partners at a critical time, the joint resolution would harm—not help—efforts to end the conflict in Yemen. And without precision-guided munitions, more—not fewer—civilians are likely to become casualties of the conflict. While I share concerns that certain Members of Congress have expressed about civilian casualties of this conflict, the United States has taken and will continue to take action to minimize such casualties, including training and advising the Saudi-led Coalition forces to improve their targeting processes.

The United States is very concerned about the conflict's toll on innocent civilians and is working to bring the conflict in Yemen to an end. But we cannot end it through ill-conceived and time-consuming resolutions that fail to address its root causes. Rather than expend time and resources on such resolutions, I encourage the Congress to direct its efforts toward supporting our work to achieve peace through a negotiated settlement to the conflict in Yemen.

For these reasons, it is my duty to return S.J. Res. 37 to the Senate without my approval.

DONALD J. TRUMP.

THE WHITE HOUSE, *July 24, 2019.*

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Annex 14

VETO—S.J. RES. 36 (PM 23) Message from the President of The United States, 24 July 2019

116th Congress, 1st Session - - - - - - - - - - - - - - - Senate Document 116–7

VETO—S.J. RES. 36
(PM 23)

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S.J. RES. 36, A JOINT RESOLUTION PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE PROPOSED TRANSFER TO THE KINGDOM OF SAUDI ARABIA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE KINGDOM OF SPAIN, AND THE ITALIAN REPUBLIC OF CERTAIN DEFENSE ARTICLES AND SERVICES

JULY 24, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
37–197 WASHINGTON : 2019

To the Senate of the United States:

I am returning herewith without my approval S.J. Res. 36, a joint resolution that would prohibit the issuance of certain licenses with respect to several proposed agreements or transfers to the Kingdom of Saudi Arabia, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Spain, and the Italian Republic. This resolution would weaken America's global competitiveness and damage the important relationships we share with our allies and partners.

In particular, S.J. Res. 36 would prohibit licensing for manufacturing in Saudi Arabia of Guidance Electronics Detector Assemblies, Computer Control Groups, Airfoil Groups, Aircraft Umbilical Interconnect Systems, Fuses, and other components to support the production of Paveway II, Enhanced Paveway II, and Paveway IV munitions. The misguided licensing prohibitions in the joint resolution directly conflict with the foreign policy and national security objectives of the United States, which include strengthening defense alliances with friendly countries throughout the world, deepening partnerships that preserve and extend our global influence, and enhancing our competitiveness in key markets. Apart from negatively affecting our bilateral relationships with Saudi Arabia, the United Kingdom, Spain, and Italy, the joint resolution would hamper the ability of the United States to sustain and shape critical security cooperation activities. S.J. Res. 36 would also damage the credibility of the United States as a reliable partner by signaling that we are willing to abandon our partners and allies at the very moment when threats to them are increasing.

The United States is providing the licenses that the joint resolution seeks to prohibit for many reasons. First and foremost, it is our solemn duty to protect the safety of the more than 80,000 United States citizens who reside in Saudi Arabia and who are imperiled by Houthi attacks from Yemen. The Houthis, supported by Iran, have attacked civilian and military facilities using missiles, armed drones, and explosive boats, including in areas frequented by United States citizens, such as the airport in Riyadh, Saudi Arabia. Second, the joint resolution would degrade Saudi Arabia's military preparedness and ability to protect its sovereignty, directly affecting its ability to defend United States military personnel hosted there. Third, Saudi Arabia is a bulwark against the malign activities of Iran and its proxies in the region, and the licenses the joint resolution would prohibit enhance Saudi Arabia's ability to deter and defend against these threats.

In addition, S.J. Res. 36 would negatively affect our NATO Allies and the transatlantic defense industry. It could, for example, produce unintended consequences for defense procurement and interoperability with and between our partners. It could also create diplomatic and security opportunities for our adversaries to exploit.

(1)

Finally, by restricting the ability of our partners to produce and purchase precision-guided munitions, S.J. Res. 36 would likely prolong the conflict in Yemen and deepen the suffering it causes. By undermining bilateral relationships of the United States and impeding our ability to support key partners at a critical time, the joint resolution would harm—not help—efforts to end the conflict in Yemen. And without precision-guided munitions, more—not fewer—civilians are likely to become casualties of the conflict. While I share concerns that certain Members of Congress have expressed about civilian casualties of this conflict, the United States has taken and will continue to take action to minimize such casualties, including training and advising Saudi-led Coalition forces to improve their targeting processes.

The United States is very concerned about the conflict's toll on innocent civilians, and is working to bring the conflict in Yemen to an end. But we cannot end it through ill-conceived and time-consuming resolutions that fail to address its root causes. Rather than expend time and resources on such resolutions, I encourage the Congress to direct its efforts toward supporting our work to achieve peace through a negotiated settlement to the conflict in Yemen.

For these reasons, it is my duty to return S.J. Res. 36 to the Senate without my approval.

DONALD J. TRUMP.

THE WHITE HOUSE, *July 24, 2019.*

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Annex 15

***Claim of Charles Adrian Van Bokkelen v. The Government of Hayti*, Brief of Argument in Support of the Claim, 8 August 1888**

CLAIM OF CHARLES ADRIAN VAN BOKKELEN

vs.

THE GOVERNMENT OF HAYTI.

BEFORE THE ARBITRATOR.

Brief of Argument in Support of the Claim.

The following-named papers have been examined by counsel:

(*a*) All the correspondence in regard to the case, with inclosures, printed in "Foreign Relations" for 1884 and 1885.

(*b*) Note of His Excellency the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti to the Secretary of State of the United States, dated August 15, 1887, in regard to the claim, with a "statement of facts and points of law relating thereto," and four Exhibits submitted on the part of the Haytien Government, namely:

Exhibit No. I. — Copy of the decision of the Court of Cassation of Hayti, dismissing the appeal of Charles A. Van Bokkelen *vs.* Louis Nadal. Rendered September 11, 1883. Translation: pp. 13.

Exhibit No. II. — Copy of Van Bokkelen's schedule (bilan), registered in the office of the clerk of the Civil Court at Port au Prince, February 15, 1883: pp. 2.

Exhibit No. III. — Copy of the decision of the Court of Cassation, dismissing the appeal of Van Bokkelen *vs.* St. Aude, jr., and the National Bank of Hayti. Rendered December 18, 1884. Translation: pp. 16.

Exhibit No. IV. — Copy of the decision of the Civil Court of Port au Prince denying Van Bokkelen's petition to be allowed to make judicial assignment for the benefit of his creditors, and to be discharged from imprisonment. Rendered May 27, 1884. Translation: pp. 35.

(*c*) Note of His Excellency the Haytien Minister to the Secretary of State of the United States, dated February 14, 1888, with a second brief or argument, entitled "In the matter of the claim of C A Van Bokkelen, additional points of law relating thereto" pp 25

(*d*) Memorandum of the Third Assistant Secretary of State of the United States, entitled "Claim of C A Van Bokkelen *vs* Hayti," dated April 17, 1888 pp 10

(*e*) Protocol of an agreement between the Secretary of State of the United States and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti, for submission to an arbitrator of the claim of Charles Adrian Van Bokkelen Signed May 24, 1888

The submission of the claim to arbitration is in the following terms

The United States of America and the Republic of Hayti being mutually desirous of maintaining the good relations that have so long subsisted between them, and of removing, for that purpose, all causes of difference, their respective representatives, that is to say, Thomas F Bayard, Secretary of State of the United States, and Stephen Preston, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti, have agreed upon and signed the following protocol

1 It having been claimed on the part of the United States that the imprisonment of Charles Adrian Van Bokkelen, a citizen of the United States, in Hayti, was in derogation to the rights to which he was entitled as a citizen of the United States under the treaties between the United States and Hayti, which the Government of the latter country denies, it is agreed that the questions raised in the correspondence between the two governments in regard to the imprisonment of the said Van Bokkelen shall be referred to the decision of a person agreed upon by the Secretary of State of the United States and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti

2 The referee so chosen shall decide the case upon such papers as may be presented to him by the Secretary of State of the United States and the Minister of Hayti, respectively, within two months after the date of his appointment, but he shall not take into consideration any question not raised in the correspondence between the two governments prior to the date of the signature of this protocol

3, Each government shall submit with the papers presented by it a brief of argument, and should the referee so desire he may require further argument, oral or written, to be made within five months from the date of his appointment He shall render his decision within six months from said date

4 A reasonable fee to the referee shall be paid by the Government of Hayti

5 Any award made shall be final and conclusive, and, if in favor of the claimant, shall be paid by the Government of Hayti within twelve (12) months of the date of such award

Done in duplicate, at Washington, this 24th day of May, one thousand eight hundred and eighty eight

T F BAYARD [SEAL]
STEPHEN PRESTON [SEAL]

STATEMENT OF FACTS.

[References to the Exhibits are to the *translations*.]

Charles Adrian Van Bokkelen was a citizen of the United States who, prior to the year 1872, resided in Brooklyn, N. Y. In that or the following year he went to Hayti, and established himself in business in Port au Prince. In 1880 he married a Haytien lady, the widow of General P. Lorquet, an owner real estate in Hayti in her own right. There were two children of this marriage, who, with their mother, reside at Port au Prince.

On the 15th of February, 1883, having sustained severe losses in his business, and a judgment against him having been affirmed in the Court of Cassation, which he was unable to pay, and under which he was liable to be imprisoned for one year, he filed a schedule of his assets and liabilities (Exhibit No. 2) in the Civil Court of Port au Prince, preparatory to applying for the benefit of judicial assignment, under which, in Hayti, an honest but unfortunate debtor is allowed to surrender all his property for the benefit of his creditors, and is entitled to be discharged from prison, if he has been arrested, and to be free from arrest thereafter on account of his existing indebtedness (see Haytien Code of Civil Procedure, arts. 787–795; Civil Code, arts. 1051–1055; Code of Commerce, art. 569, *infra*). At that time, in Hayti, imprisonment for mere debt had not been abolished (Exhibit 4, p. 7; "Foreign Relations," 1885, p. 483; Mr. Preston's first statement, p. 5 middle). Three other judgments were subsequently recovered against Van Bokkelen," two in favor of the Bank of Hayti and one in favor of J. Archin, under each of which he was liable to three years' imprisonment in default of payment, making ten years in all. A fifth judgment was rendered against him in favor of St. Aude, jr., which does not seem to have decreed any imprisonment. These judgments are enumerated in Mr. Langston's dispatch of January 14, 1885, to Mr. Frelinghuysen ("Foreign Relations," 1885, pp. 482–485), and it is there stated that the terms of imprisonment fixed in three of the judgments are twice as long as would have been imposed in the case of a Haytien.

After the filing of Van Bokkelen's schedule, which was duly recorded by the Clerk of the Civil Court in Port au Prince on the 15th of February, 1883 (Exhibit No. 2, indorsement; Exhibit No. 4, foot of p. 2; also *ibid*, p. 18), the proceedings seem to have been postponed by notices or writs until the following year (*ibid*, p. 10).

On or about the fifth of March, 1884, Van Bokkelen was arrested on the judgment of Toeplitz & Co., and confined in the common jail of Port au

Prince (Mr. Langston to Mr. Frelinghuysen, "Foreign Relations," 1884, p. 307). Although imprisonment for debts, irrespective of fraud in contracting them or evading their payment, was then lawful in Hayti, there seems to have been no separate prison for debtors. The character of the common jail and of the military hospital in which Van Bokkelen was confined, and the state of his health when he was incarcerated, will be noticed hereafter in connection with the question of damages.

Van Bokkelen protested against his arrest as illegal, on the ground that by an order of the Haytien authorities, published in the official journal, "it was made obligatory that before a foreigner could be placed in jail the complaint should first be submitted to the attorney for the Government for his examination and approval, and [should be] signed with his signature, with seal attached" (Mr. Van Bokkelen to Mr. Frelinghuysen, "Foreign Relations," 1884, p. 306). On the 18th of the same month it was judicially determined that Van Bokkelen's arrest was illegal. But before he was discharged, other creditors, availing themselves of a provision of Haytien law under which, when a debtor is imprisoned, they can keep him in jail by "recommending" him, recommended him accordingly, and the jailer refused to discharge him (*ibid*, p. 306; also p. 308, second paragraph from top; also "Foreign Relations," 1885, p. 477, near bottom; p. 534, bottom; pp. 535, 536, 538). [Some dates in Van Bokkelen's statement are incorrectly printed.]

It is to be noted that these creditors took advantage of Van Bokkelen's illegal imprisonment to keep him from getting out of jail by a method which would not have enabled them to put him in ("Foreign Relations," 1885, p. 535, Inclosure I; also p. 538).

Van Bokkelen thereupon, through his counsel, applied to the Civil Court of Port au Prince for the benefit of judicial assignment (Exhibit No. 4, pp. 2 and 3).

He had been advised that under the Treaty of 1864 between the United States and Hayti, he was entitled to the benefit of judicial assignment the same as if he were a citizen of that country.

The object of the Treaty, as expressed in its opening paragraph, is "to make lasting and firm the friendship and good understanding which happily prevail between both nations, and to place their commercial relations upon the most liberal basis."

The articles defining the reciprocal rights of citizens of each of the two nations residing and doing business in the territory of the other are expressed as follows:

ARTICLE VI.

The citizens of each of the contracting parties shall be permitted to enter, sojourn, settle, and reside in all parts of the territories of the other, engage in business, hire and occupy warehouses, provided they submit to the laws, as well general as special, relative to the rights of traveling, residing, or trading. While they conform to the laws and regulations in force they shall be at liberty to manage themselves their own business, subject to the jurisdiction of

either party, respectively, as well in respect to the consignment and sale of their goods as with respect to the loading, unloading, and sending off their vessels They may also employ such agents or brokers as they may deem proper, it being distinctly understood that they are subject also to the same laws

The citizens of the contracting parties shall have free access to the tribunals of justice, in all cases to which they may be a party, on the same terms which are granted by the laws and usage of the country to native citizens, furnishing security in the cases required, for which purpose they may employ in the defense of their interest and rights such advocates, solicitors, attorneys, and other agents as they may think proper, agreeably to the laws and usage of the country

ARTICLE IX

The citizens of each of the high contracting parties, within the jurisdiction of the other, shall have power to dispose of their personal property by sale, donation, testament, or otherwise, and their personal representatives, being citizens of the other contracting party, shall succeed to their personal property, whether by testament or *ab intestato* * * * * *

In the proceedings upon Van Bokkelen's petition to the Civil Court of Port au Prince for the benefit of judicial assignment, twelve of his creditors appeared, and all but two assented (Exhibit No 4, pp 3–5) These opposing creditors (Toephitz & Co and Nadal) raised various objections, but insisted mostly on article 794 of the Code of Civil Procedure and article 569 of the Code of Commerce, which expressly exclude foreigners (*les etrangers*) from the benefit of this provision of Haytien law (*ibid*, pp 5–17)

The provisions of the Haytien codes in regard to assignments for the benefit of creditors are here appended

[From the Civil Code of Hayti]

V —DE LA CESSION DE BIENS

ART 1051 La cession de biens est l abandon qu un debiteur fait de tous ses biens a ses creanciers, lorsqu il se trouve hors d etat de payer ses dettes

ART 1052 La cession de biens est volontaire ou judiciaire

ART 1053 La cession de biens volontaire est celle que les creanciers acceptent volontairement, et qui n a d effet que celui resultant des stipulations mêmes du contrat passe entr eux et le debiteur

ART 1054 La cession judiciaire est un benefice que la loi accorde au debiteur malheureux et de bonne foi, auquel il est permis, pour avoir la liberte de sa personne, de faire en justice l abandon de tous ses biens a ses creanciers, nonobstant toute stipulation contraire

ART 1055 La cession judiciaire ne confere point la propriete aux creanciers, elle leur donne seulement le droit de faire vendre les biens a leur profit, et d en percevoir les revenus jusqu a la vente

Les creanciers ne peuvent refuser la cession judiciaire, si ce n'est dans les cas exceptes par la loi

Elle opere la decharge de la contrainte par corps

Au surplus, elle ne libere le debiteur que jusqu a concurrence de la valeur des biens abandonnes, et dans le cas ou ils auraient ete insuffisants, il est oblige, s il lui en survient d autres, de les abandonner jusqu au parfait paiement

[From the Haytien Code of Civil Procedure]

TITRE XII —DU BENEFICE DE CESSION

ART 787 Les debiteurs qui seront dans le cas de reclamer la cession judiciaire accordee par l article 1054 du Code Civil, seront tenus, a cet effet, de deposer au greffe du tribunal, où la demande sera portee, leur bilan, leurs livres, s ils en ont, et leurs titres actifs

ART 788 Le debiteur se pourvoira devant le tribunal de son domicile

ART 789 La demande sera communiquee au ministere public, elle ne suspendra l effet d aucune poursuite, sauf aux juges a ordonner, parties appelees, qu il sera sursis provisoirement

ART 790 Le debiteur admis au benefice de cession sera tenu de reiterer sa cession en personne, et non par procureur, ses creanciers appeles devant le conseil des notables de son domicile, la declaration du debiteur sera constatee par proces verbal du greffier dudit conseil, qui sera signe par l un de ses membres

ART 791 Si le debiteur est detenu, le jugement qui l admettra au benefice de cession, ordonnera son extraction, avec les precautions, en tels cas, requises et accoutumees, a l effet de faire sa declaration conformement a l article precedent

ART 792 Les nom, prenoms, profession et demeure du debiteur, seront inseres dans un tableau public a ce destine, place dans l auditoire du tribunal civil de son domicile, et dans le lieu des seances du conseil des notables

ART 793 Le jugement qui admettra au benefice de cession, vaudra pouvoir aux creanciers, à l effet de faire vendre les biens meubles et immeubles du debiteur, et il sera procede a cette vente dans les formes prescrites pour less heritiers sous benefice d inventaire

ART 794 Ne pourront etre admis au benefice de cession, *les etrangers*, les stellionataires, les banqueroutiers frauduleux, les personnes condamnees pour cause de vol ou d escroquerie, ni les personnes comptables, tuteurs, administrateurs et depositaires

ART 795 Il n est au surplus rien prejuge, par les dispositions du present titre, a l egard du commerce, aux usages du quel il n est, quant a present, rien innove

[From the Haytien Code of Commerce]

LIVRE II —DE LA CESSION DE BIENS

ART 560 La cession de biens, par le failli, est volontaire ou judicaire

ART 561 Les effets de la cession volontaire se determinent par les conventions entre le failli et les creanciers

ART 562 La cession judiciaire n eteint point l action des creanciers sur les biens que le failli peut acquerir par la suite, elle n a d autre effet que de soustraire le debiteur a la contrainte par corps

ART 563 Le failli qui sera dans le cas de reclamer la cession judiciaire, sera tenue de former sa demande au tribunal, qui se fera remettre les titres necessaires, la demande sera inseree dans les papiers publics, comme il est dit l article 447 du Code de procedure civile

ART 564 La demande ne suspendra l effet d aucune poursuite, sauf au tribunal a ordonner, parties appelees, qu il y sera sursis provisoirement

ART 565 Le failli admis au benefice de cession sera tenu de faire ou de reiterer sa cession en personne et non par procureur, ses creanciers appeles, a l audience du tribunal de commerce de son domicile et, s il n y a pas de tribunal de commerce a la justice de paix, un jour de seance La declaration du failli sera constatee, dans ce dernier cas, par le proces verbal de l huissier, qui sera signe par le juge de paix

ART 566 Si le debiteur est detenu le judgment qui l admettra au benefice de cession ordonnera son extraction, avec les precautions en tel cas requises et accoutumees, a l effet de faire sa declaration conformement a l article precedent

ART 567 Les nom, prenom, profession et demeure du debiteur, seront inseres dans des tableaux a ce destines, places dans l auditoire du tribunal de commerce de son domicile, ou du tribunal civil que en fait les fonctions, dans le lieu des seances de la chambre des notables, et a la bourse

ART 568 En execution du judgment qui admettra le debiteur au benefice de cession, les creanciers pourront faire vendre les biens meubles et immeubles du debiteur, et il sera procede a cette vente dans les formes prescrites pour le ventes faites par union de creanciers

ART. 569. Ne pourront être admis du bénéfice de cession,

1. Les stellionataires, les banqueroutiers frauduleux, les personnes condamnées pour fait de vol ou d'escroquerie, ni les personnes comptables;

2. Les étrangers, les tuteurs, administrateurs ou dépositaires.

All the objections of the opposing creditors were traversed by the petitioner (*ibid*, pp. 18–25). His counsel argued that the schedule of his assets and liabilities was sufficient; that his misfortunes and good faith were manifest; that the Treaty of 1864 between Hayti and the United States repealed article 794 of the Civil Code of Procedure and article 569 of the Code of Commerce so far as the disability attaching to the petitioner in his character of American citizen or foreigner was concerned. This he argued at length, and also claimed that inasmuch as the petitioner had established himself at Port au Prince in business, and married a Haytien wife who owned real property in the city and had borne him children; having thus fixed his home as well as his commercial interests in Hayti with the knowledge of the Government, a just construction of the term "*les étrangers*" required that he should not be treated as a foreigner or a stranger, but as a domiciled merchant, entitled to all civil rights and privileges as distinguished from those that are political; and in support of the proposition that the exercise of civil rights is independent of the exercise of political rights, and that "the capacity of a citizen resides in the combination of civil and political rights," he cited article 11 of the Civil Code of Hayti.

The opposing creditors (Toeplitz & Co.) rejoined that they had no knowledge of the Treaty and had not been served with a copy; and therefore moved for information in that regard at the cost of the petitioner (Exhibit 4, p. 26). Petitioner's counsel replied that the Treaty was not a document but a law of which no one was supposed to be ignorant (*ibid*, p. 27).

It appears also that the Government of Hayti, as well as all the parties to these proceedings, was represented by counsel and heard by the court (*ibid*, p. 29.)

The first question that the court decided was "whether the petitioner should be condemned to furnish to Toeplitz & Co. information regarding the Treaty concluded between Hayti and the United States of America, and whether such information should likewise be furnished to Louis Nadal" (*ibid*, p. 29). That question the court decided in favor of Van Bokkelen, as follows:

Whereas a Treaty concluded between Hayti and the United States of America, November 3, 1864, sanctioned by the Senate, and promulgated by the Executive branch of the Government, is a law of the State; whereas article 75 of the Code of Civil Procedure renders it obligatory upon the petitioner to furnish a copy of the documents or of that part thereof upon which the petition is based; but it does not provide that a copy of the law or of the provision of the law on which the petition is based shall be furnished; whereas, thus, Mr. C. A. Van Bokkelen is not obliged to furnish information of the Treaty to Louis Nadal, and can not be condemned to furnish such information to Toeplitz & Co., who are under obligations, just as C. A. Van Bokkelen is, to have knowledge of the law (*ibid*, p. 31).

On the main question, involving the rights of Van Bokkelen under the Treaty, and deciding upon the objection of his alienage based upon article

794 of the Code of Civil Procedure and article 569 of the Code of Commerce, interposed by L Toeplitz & Co and by Louis Nadal, the court set forth its opinion in the following preamble (*ibid*, pp 32 and 34)

Whereas according to the terms of the aforesaid articles foreigners are not admitted to the benefit of an assignment, whereas the reason which causes the exclusion of foreigners is that the benefit of an assignment has always been regarded as an institution of civil law which should benefit native citizens only, whereas, although it is true that the benefit of an assignment may be asked for by a foreigner belonging to a nation with which there is a treaty in virtue of which Haytiens can invoke it (the assignment) in the country of such foreigner, but it is necessary also that the intention to modify the provisions of the law excluding the foreigner from the benefit of an assignment should be clearly demonstrated, whereas article 9 of the treaty of friendship, commerce, navigation, and extradition of fugitive criminals, concluded between the Republic of Hayti and the Republic of the United States of America, especially invoked by Mr C A Van Bokkelen, provides that "the citizens of each of the high contracting parties, within the jurisdiction of the other, shall have power to dispose of their personal property by sale, donation, testament, or otherwise', whereas, although the text of this stipulation, and even that of article 6, which grants to the "citizens of the two contracting parties free access to the courts of justice in all cases in which they shall be interested, on the same terms that are granted by the laws and usages of the country to native citizens,' might leave some doubt with regard to their true meaning, it would be dispelled by the rules of law concerning the interpretation of conventions which are applicable to treaties, whereas the first of these rules is to seek out the common intention of the contracting parties rather than to be guided by the literal meaning of the terms, whereas it is impossible to suppose that the intention of the contracting plenipotentiaries was to abrogate or modify by article 9 or by article 6 of the treaty, as those articles are worded, article 794 of the Code of Civil Procedure and article 569 of the Code of Commerce, which excludes a foreigner from the benefit of making an assignment, whereas such an intention, which is revealed by no other provision of the treaty, could not be admitted without irrecusable evidence, whereas such intention would have been elsewhere expressed in positive terms if it had existed, whereas all clauses must be interpreted by each other, such sense being given to each as results from the entire instrument, the clause of article 9 and that of article 6 of the treaty should be understood as allowing American citizens to do that for which they provide, the assignment of property being set aside, whereas it is of little importance that Mr C A. Van Bokkelen is married to a Haytien wife, who became by that fact a foreigner, that he resides in Hayti, where he owns establishments, that he is authorized by article 1206 of the Civil Code to pledge alone the property held in common by himself and wife, since all these considerations are not of a nature to confer upon him a right which the law formally denies him, whereas by the above solution it becomes useless to examine the other petitions of the parties with regard to the form and substance of the application

"For these reasons," says the judgment, "the court, after having deliberated, denies the application" (*ibid*, p 34)

His application to make the judicial assignment having been denied by the Civil Court of Port au Prince, Van Hokkelen was kept in jail He appealed to the Court of Cassation — the court of last resort — which rendered its decision affirming the judgment of the Civil Court, on the 26th of February, 1885, almost a year from the time when Van Bokkelen was first imprisoned It seems that pending his appeal the time within which further objections could be made by his creditors to his petition expired on the 21st of October, 1884, and that no one, not even the parties upon whose application he had been illegally arrested the previous March, made any opposition

This fact is stated in a letter from Van Bokkelen's father to Mr Frelinghuysen, who was then Secretary of State, dated November 15, 1884, a copy of which was transmitted by Mr Davis, Acting Secretary, to Mr Langston, United States Minister at Port au Prince, November 19, 1884 ("Foreign Relations," 1884, p 335) A translation of the decree of the Court of Cassation is printed in "Foreign Relations," 1885, p 499, and reads as follows

Decree of the Court of Appeals of Hayti

Whereas the judicial assignment of property is an institution of civil right, the articles 769 [794] of the Code of Civil Procedure and 569 of the Code of Commerce excepting foreigners from the benefit of this institution, since they do not exercise in Hayti all rights, they can only enjoy privileges derived from natural rights or of mankind, and not those which are derived from purely civil law

Whereas nowhere in the treaty of friendship, of commerce, of navigation, and of the extradition of fugitive criminals, concluded November 3, 1864, between the United States of America and the Republic of Hayti, is to be found that it confers upon the citizens of these two countries the right to exercise the judicial assignment of property, there can be concluded from the terms of articles 6 and 9 of the treaty nothing which would authorize the opinion that this right could be invoked in the United States by a Haytien or in Hayti by an American In consequence thereof, Americans can not enjoy in Hayti such civil right, the enjoyment of which is attached exclusively to the quality of a Haytien That in stipulating that "the citizens of the contracting parties should have free access to the courts of justice in all cases wherein they may be interested, on the same conditions that the laws and usages of the country give to their citizens, furnishing security required in the case, this provision of the article 6 was not intended to grant to the citizens of these two nations the enjoyment of civil rights which do not attach [except] to citizens

Therefore it follows from that which precedes that the judgment denounced has made a good and just application of article 769 [794] of the Code of Civil Procedure and 569 of the Code of Commerce, and a sound interpretation of the articles 6 and 9 of the treaty above cited

For such reasons, and without there being any necessity of passing on the result of non acceptance raised by the parties the court rejects the appeal made by Mr Charles Adrian Van Bokkelen against the judgment rendered May 27, 1884, by the Civil Court of Port au Prince, orders, in consequence, the confiscation of the fine deposited, and condemns the said Mr Van Bokkelen to the expenses, liquidated at the sum of ——, not including the cost of the present decrees

Given and pronounced by us, B Lallemand, president, J Martineau, F Valles, M Fremont, F Nazon, judges, at the Palace of Justice of the Court of Appeals in public session, on the 26th of February, 1885 Signed as follows on the minutes

B Lallemand, E Valles, Fremont, J Martineau, F Nazon, and P Lerebours

A true copy

P LESPES,
Lawyer

The Secretary of State of the United States was informed of this decision on the 21st of March, 1885, and on the 28th of the same month he sent a dispatch to the United States Minister at Port au Prince, in which, after reviewing the facts and the law, he claimed that there had been a denial of justice in Van Bokkelen's case, and that he should be released from jail forthwith, in the following terms (Mr Bayard to Mr Langston, "Foreign Relations," 1885, pp 507–510)

The release of Mr Van Bokkelen is now asked on independent grounds It is maintained, first, that continuous imprisonment for debt, when there is no criminal

is contrary to what are now generally recognized principles of international law It is maintained, secondly, that the imprisonment of Mr Van Bokkelen is a contravention of articles 6 and 9 of the Treaty of 1865 between the United States and the Republic of Hayti

The Haytien Government has a clear and ample opportunity to relieve this case from all difficulty by recognizing the error of their courts in supposing that the privilege of release of an imprisoned debtor would be denied to a Haytien citizen by the United States courts, upon making assignment of his property for the benefit of his creditors

You are now instructed to earnestly press the views of this Government, as outlined in this instruction, on the early attention of the Government of Hayti by leaving a copy thereof with the Minister of Foreign Affairs

The response of the Government of Hayti should be promptly communicated to this Department

On the 17th of April, 1885, Mr Langston sent a copy of this dispatch to the Haytien Government and urged the prisoner's immediate release, inviting attention also to his "feeble and failing health" (Mr Langston to Mr Prophete, "Foreign Relations," 1885, p 514) The reply of the Haytien Government, twelve days later, was an elaborate defense of Van Bokkelen's imprisonment—solely, however, upon the ground that he was an alien (*ibid*, p 515) Meanwhile, and shortly after the decision of the Court of Cassation, the prisoner, who, at the request of the United States Minister, had been removed to the military hospital on account of his infirm condition, was sent back again to the common jail (*ibid*, 513) On the 15th of May the United States Minister sent another note to the Haytien Government, insisting on Van Bokkelen's immediate release (Mr Langston to Mr Prophete, *ibid*, p 516), and on the afternoon of the 27th of that month Van Bokkelen was conducted to the United States legation by an attorney of the Haytien Government, "on its order, as stated, and thus given his release and liberty" (Mr Langston to Mr Bayard, *ibid*, p 521) On the 5th of the following June Mr Langston received a note from the Haytien Secretary of State for Foreign Affairs, maintaining the position which had been held throughout by the Haytien Government, and closing as follows (*ibid*, p 524)

I understand that Mr Van Bokkelen has been put at liberty This result, happy for him, is due, doubtless, to some arrangement made with his creditors This, besides, to which I will not address myself further, as it is not proper, has itself, as you will understand, been accomplished without interference of the Executive power, it comes to pass without saying that it annuls in no wise the considerations which this Department has plead relative to the case of Van Bokkelen

Pending Van Bokkelen's appeal to the Court of Cassation, the Department of State, upon representations of the United States Minister at Port au Prince, in regard to the adjudged illegality of the arrest in the first instance, and the prisoner's unquestionable right under the treaty to make the judicial session, and obtain his release ("Foreign Relations," 1884, p 308), had instructed the Minister to use every proper effort with the Haytien Government to that end (*ibid*, pp 329–335, also "Foreign Relations," 1885, pp 477, 478, 481, 482, 490, 492, 494, 498)

Mr Van Bokkelen sailed for the United States shortly after his release, and on his arrival made a statement of his case to the Secretary of State, and an appeal for his good offices in collecting indemnity from the Haytien Government (Mr Van Bokkelen to Mr Bayard, September 19, 1885, *ibid*, pp 537–539) In response, Mr Bayard addressed a note to the United States Minister at Port au Prince, dated October 2, 1885, instructing him as follows (*ibid*, p 537)

Mr Bayard to Mr Thompson

DEPARTMENT OF STATE,

SIR WASHINGTON, *October 2, 1885*

I herewith inclose a copy of a letter from Mr C A Van Bokkelen, of the 19th ultimo, in reference to his illegal imprisonment at Port au Prince and his claim for damages in consequence thereof

In view of Mr Van Bokkelen's present statement of facts and those already before your legation in regard to his case, I desire that you will call the attention of the Government of Hayti to his claim There can be no doubt that Mr Van Bokkelen was wrongfully imprisoned by the Haytien authorities, and that great damage accrued to him thereby

Under these circumstances, therefore, you are directed to ask and to press for the redress claimed by Mr Van Bokkelen, or, if the amount to be paid can not be immediately agreed upon, for a reference of the question to an arbitrator, so that the case may be disposed of without unnecessary delay I am, &c, T F BAYARD

To this Mr Thompson, who had succeeded Mr Langston, made the following reply (*ibid*, p 542)

Mr Thompson to Mr Bayard

LEGATION OF THE UNITED STATES,

SIR PORT AU PRINCE, HAYTI, *November 3, 1885*

I have to inform you of the death of Mr Charles A Van Bokkelen, who died on the 1st instant, at 2 o clock in the afternoon, aged thirty seven years He was buried on the 2d instant, many Americans and foreigners following the remains to their last resting place I attended the funeral, and it was a fact worthy of note that a sincere feeling of sadness at his death and sympathy for his wife and two small children seemed to pervade all present I had entered his claim against the Haytien Government to the sum of $113,600 some time before his death, and will continue to press the same, as advised by the Department

I am, &c, JOHN E W THOMPSON

Subsequent negotiatiations between the two governments have resulted in an agreement to submit the claim to arbitration, pursuant to the terms of the protocol, the text of which is given at the commencement of this brief

THE QUESTIONS TO BE ARBITRATED

Two questions arise on the facts

1 Has there been a denial of justice by the Haytien Government in this case? Or, in other words, was Van Bokkelen entitled by the terms of the Treaty of 1864 to be discharged from prison on the same terms as a citizen of Hayti imprisoned for the same cause?

2 If there has been a denial of justice, what should Hayti pay to the United States by way of damages for the benefit of the representatives of the deceased?

THE CASE UNDER THE TREATY.

In support of the proposition that the decisions of the Haytien courts in Van Bokkelen's case were in contravention of the treaty and constituted a denial of justice, the attention of the Arbitrator is most respectfully invited to the following considerations:

I. The express purpose of the treaty was "to make lasting and firm the friendship and good understanding" of the two republics, and "*to place their commercial relations upon the most liberal basis.*" To this end it is provided in article 6 (*supra*) that "the citizens of each of the contracting parties shall be permitted to enter, sojourn, SETTLE, and RESIDE in all parts of the territories of the other, engage in business, hire and occupy warehouses, provided they *submit to the laws*, as well *general as special*, relative to the rights of traveling, *residing*, or *trading*." The further following provision of article 6 seems intended to provide against the contingency that in the administration of the laws in matters arising out of trade and commerce there might be some discriminations applying to foreigners which it was desirable to remove, as against the citizens of each republic who might reside in the territory of the other. This, of course, was a consideration worthy of the attention of the negotiators, and one that would naturally arise in the performance of their duty. They had already avowed their mutual purpose to place "the commercial relations" of the two countries "upon the *most liberal basis*," and it must be supposed that they were aware, at least in a general way, of the extent to which citizens of the United States were at that time engaged in trade and commerce with Hayti, and residing in Haytien territory; also, how important a service is rendered in the establishment and enlargement of "commercial relations" by such resident merchants and traders, and how desirable it was both for such merchants themselves and also for the growth of commerce and trade between the two countries, that the citizens of neither country should be under any civil disability while residing and doing business in the territory of the other, but should be protected by and amenable to the same laws in all commercial matters. In this light, which is shed upon the subject by the avowed purpose which the two republics had in view in the treaty, the following additional and later provision of article 6 is to be considered:

> The citizens of the contracting parties shall have *free access* to the tribunals of justice, in *all cases to which they may be a party* on the *same terms* which are granted by the laws and usage of the country to *native citizens*, furnishing security in the cases required.

It is also to be assumed in construing this later provision that the negotiators were aware of the state of the law in the two countries regarding im-

prisonment for debt and discriminations against foreigners; that in Hayti the body of a debtor could be taken on execution as well in cases of contract as in tort, while in the United States imprisonment for mere debt had been abolished and resident aliens were able to make assignments for benefit of creditors, either voluntary or judicial, on the same terms as citizens.

II. It is agreed that the proceedings by which Van Bokkelen sought to obtain the benefit of the "cession de biens" were judicial. Article 1052 of the Haytien Civil Code divides assignments into two classes — voluntary and judicial. The judicial assignment involves "access to the courts." This access the treaty said was to be "free." It is clear, and has not yet been denied, that Van Bokkelen could have been a party defendant in such proceedings; that he could have been summoned by a petitioning debtor and could have appeared in court and assented or objected to the petitioner's discharge as if he himself were a native citizen. Now, the treaty provides that a Haytien residing and doing business in the United States, and an American residing and doing business in Hayti "shall have free access to the courts in *all cases to which they may be a party* on the *same terms* which are granted by the laws and usage of the country to *native citizens*."

We submit that this language, taken in connection with the avowed purpose of the treaty, and its description of the persons to whom it refers, makes its intention as clear as if it had said in so many words that the term "*les ètrangers*," in articles 569 of the Code of Commerce and 794 of the Code of Civil Procedure, should not be construed so as to include citizens of the United States residing and engaged in business in Hayti.

III. The opinions rendered by the Haytien courts in regard to the effect of the treaty which have been set out in our "Statement of Facts" (*supra*), are based upon no substantial or comprehensible grounds. The Civil Court, after stating that "the reason which causes the exclusion of foreigners is that the benefit of an assignment has always been regarded as an institution of civil law which should benefit native citizens only," admitted that "it is true that the benefit of an assignment may be asked for by a foreigner belonging to a nation with which there is a treaty in virtue of which Haytiens can invoke it in the country of such foreigner." But the court added that it was "impossible to suppose that the intention of the contracting plenipotentiaries was to abrogate or modify by article 9 or by article 6 of the treaty, as those articles are worded, article 794 of the Code of Civil Procedure, and article 569 of the Code of Commerce, which exclude a foreigner from the benefit of making an assignment. But why "impossible"? France, from whom Hayti has taken most of her law, abrogated the restriction and extended the benefit of judicial assignment to aliens more than half a century ago.* And was it not the most natural and desirable thing in the world for

*In view of the citations of the Haytien Minister from obsolete French decisions and laws, we quote from a statement of the status of resident and domiciled aliens in France prepared by M. Treitt, legal adviser to the British embassy in Paris, a translation of which is printed in the appendix of Moore's *Treatise on Citizenship*, pp. 328–331.

Aliens admitted to domicile enjoy *all civil rights*—such are the formal terms in the 13th article of the Code Napoleon (A. D. 1803), it results that even before the law of the 14th of July, 1819, reported above, the

the United States to desire to prevent by treaty what has occurred in the Van Bokkelen case? But, say the judges of the Civil Court, "such intention, which is revealed by no other provision of the treaty, could not be admitted without irrecusable evidence," and "would have been elsewhere expressed in positive terms if it had existed." But why expressed *elsewhere* in *positive* terms if the avowed purpose of the treaty and the language of the section in question make the meaning plain? And why should that meaning be "revealed" by any "*other* provision" of the treaty? Is it not enough that it is not contradicted by any other provision — that it is in harmony with them all? It happens, however, that there is another provision in article 9, which, although it is not needed to make the meaning of article 6 perfectly clear, does yet clearly aim at the same reciprocal equality in the judicial administration of commercial and business affairs.

But an ingenious attempt has been made to break the cumulative force of this "other" provision. The words of article 9 are: "The citizens of each of the High Contracting Parties within the jurisdiction of the other shall have power to *dispose* of their personal property by sale, donation, testament, or *otherwise*." It has been argued on the part of the Haytien Government (Mr. Preston's second brief, pp. 12–14), that one can not "*dispose*" of property in the sense of the civil law "without transmitting it," and inasmuch as in the judicial assignment no title passes to the creditors, and it is discretionary with the court whether to accept the proffered abandonment on the part of the debtor and discharge him from prison, or not, his offer to surrender his property — or his abandonment of it to abide the decision of the court — can not be called a *disposition* of it, and can not be regarded as within the scope of the treaty. We do not understand Mr. Preston to claim that any property remains in the debtor after he has filed his "bilan," whether it is imperfect or not, and after he has petitioned the court to admit him to the benefit of the "cession." When, however, such admission is granted, the relinquishment is complete; and while article 1055 of the Civil Code provides expressly that

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alien who is domiciliated is in a position to receive, to dispose of property, etc as a Frenchman he can take out proceedings in justice without being subject to the surety *judicatum solvi*

He is admitted to the privilege of transferring his property to his creditors, thereby liberating himself from all his debts Before the abolition of writ of arrest, the domiciled alien was *subject only in the same cases as Frenchmen*, and he could exercise the writ of arrest against aliens

To be brief, the domiciliated alien, except in political rights, enjoys *the same civil rights as a denizen*, nevertheless, as he is always an alien, he can not be a witness in certain authenticated acts, or be arbiter, since arbitrage is a jurisdiction

The domicile acquired in France does *not* absolve the alien from the obligations which personal status in his own country imposes on him, or of *his obligations to his native country* * * *

To sum up The privileges of an alien are regulated by the laws of his own country, his personal status follows him always

But in France this alien enjoys as a denizen the advantages of all contracts, real or personal, recognized by the French law

From any point of view, the condition or status of an alien, *whether resident or domiciliated*, differs very little at this time from the condition of the Frenchman

Jurisprudence tends continually to ameliorate the condition of aliens they are only refused rights which are expressly denied by laws not yet modified, and *they enjoy, absolutely, all the rights and privileges by which they are invested by the law of nations*

It is to be noted also that Congress, shortly after the adoption of the Constitution, in providing for the discharge of poor persons indebted to the United States, included resident aliens, and that all such persons were also entitled to the benefit of the National Bankrupt Act of 1867 on the same terms as citizens

the title of the property does not pass to the creditors by the "cession," it also provides that it gives them the right to have the property sold for their benefit, and to receive the rents and profits pending sale. Such a relinquishment as this seems to us to be a most complete "disposition" of the property. The debtor divests himself of it and the law takes it—the debtor delivers it absolutely into the power of the court for the benefit of his creditors. It seems to us immaterial whether there is any particular assignee in bankruptcy or not. The property is sold and the proceeds distributed by process of law. Mr. Preston states that to lease property or pledge it is to *dispose* of it and *transmit* it in the sense of the civil law. But in both those cases the property remains in the lessor and the pledgor, subject only to the use in the one case and the lien in the other. The judicial "cession" of the Haytien code is clearly a much more thorough "disposition" and "transmission" than lease or pledge. It was this "disposition" and "transmission" of his property that Van Bokkelen sought to make, but the Haytien courts decided he could not be allowed to do it, and must therefore stay in jail, because he was an alien.

IV. In denying the motion of Toeplitz & Co. (*supra*, p. —) for a copy of the treaty, or of those provisions in it which Van Bokkelen claimed had removed his disability as an alien, the Civil Code of Port au Prince declared that the "Treaty concluded between Hayti and the United States of America November 3, 1864, sanctioned by the Senate, and promulgated by the executive branch of the Government, is a LAW OF THE STATE." Thus in Hayti, as in the United States, treaties, duly ratified and published, are part and parcel of the supreme law of the land. The fourth article of the Haytien Civil Code provides that when there is a conflict between several transitory laws, the later law abrogates whatever is contrary to it in the earlier law, even although the legislature should omit to make mention of that abrogation. It thus appears by the Haytien Code that the treaty (being a law of the state) does not need to contain (as claimed on the part of the Haytien Government) any clause expressly repealing any earlier conflicting law. It is enough if the intention is clear and if that intention cannot be effected without the abrogation of some contrary provision. In that case the obstacle is removed by force of the treaty. In Van Bokkelen's case the exclusion of foreigners from the benefit of judicial assignment should have yielded to the force of the treaty. And that force is not a foreign interference—it is the force of Haytien law operating in Hayti with the additional sanction of a solemn compact in which the faith of Hayti and of the United States is reciprocally pledged.

But even if treaties were not part and parcel of the supreme law in Hayti, the treaty in question would still be the measure of her responsibility to the United States, and it would be Hayti's duty, if her municipal law was in conflict with her treaty obligations, and was not repealed by force of the treaty, to make the legislative changes required. This ground was taken by the United States in its controversy with France when the French Chamber

of Deputies refused to make the necessary appropriations to carry out the treaty for the payment of French spoliations to the United States. We have quoted Mr. Wheaton on this point elsewhere (*infra*, p. 29); and the principle is so familiar that it is not thought necessary to cite further authorities.

As we have already observed, Articles 6 and 9 of the treaty deal with a specific class of persons, and define their reciprocal rights in judicial proceedings and in the disposition of personal property in the two countries. It is such treaties especially that have the force of municipal law.

So Heffter, whom Lawrence quotes in his notes to Wheaton (p. 459):

> Public treaties, *which concern the subjects and their individual relations*, have the same authority as the laws of the State if they have been regularly contracted and published.

And Lawrence continues:

> It thus appears that, in this respect, the Constitution of the United States is only declaratory of the rule of the law of nations. A treaty constitutionally concluded and ratified, abrogates whatever law of any one of the States may be inconsistent therewith.

When the convention between the United States and Great Britain on the subject of international copyright in works of science, literature, and art, which was signed on the 17th of February, 1853, was pending in the Senate, the British Minister invited the attention of the Secretary of State to a statute of the United States of February 3, 1831, limiting the rights of property in works of this nature to "*persons being citizens of the United States or resident therein*," and raised the question whether as the American law then stood a real reciprocity would be insured by the convention to British subjects, or whether it would be necessary that a law of the United States Congress should be passed to that effect. This question was referred to the Attorney-General of the United States, who in a long and elaborate opinion, laid down the two following propositions as established by decisions of the Supreme Court of the United States.

> 1. A treaty, constitutionally concluded and ratified, abrogates whatever law of any one of the States may be inconsistent therewith.
>
> 2. A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect of repealing, under the general conditions of the legal doctrine that *leges posteriores priores contrarias abrogant*, all pre-existing federal law in conflict with it, whether unwritten, as law of nations, of admiralty, and common law, or written, as acts of Congress (6 Opinions Attorneys General, 291).

Treaties may operate not only upon such personal rights and privileges as copyright and patents, removing municipal disabilities of aliens and non-residents, but also upon the inheritance and conveyance of land in foreign countries.

When a decision was made in the State of Iowa, adverse to the power of the Federal Government to provide by treaty for the devise or descent to aliens of real property, contrary to the policy of the State laws, the opinion of the Attorney-General was taken on the subject at the suggestion of the minister of Prussia, Baron de Gerolt, and was to this effect (8 Opinions Attorneys General, 415):

Whatever there is of general question in the matter, has been duly considered by the courts of the United States in construing the 9th article of the treaty between the United States and Great Britain of November 19, 1794, which stipulated in substance that British subjects might continue to hold land in the United States, and grant, sell, and devise the same in like manner as if resident citizens, and that neither they nor their heirs or assigns should, as respecting said lands, be regarded as aliens, with reciprocal engagements of the same tenor on the part of Great Britain *Here all impediment of alienage was absolutely levelled to the ground, despite the laws of the State* It is the direct constitutional question in its fullest conditions Yet the Supreme court held that the stipulation was within the constutional powers of the Union (Fairfax s lessee *s* Hunter s lessee, 2 Cranch, p 627, see also Weir *s* Hylton, 3 Dall, p 242)

So in Great Britain the master of the rolls, giving judgment in *Sutton* vs *Sutton* (1 Russell & Mylne's Reports, p 663), in construing the same treaty said

The privileges of natives being reciprocally given, not only to the actual possessor of lands, but to their *heirs and assigns*, it is a *reasonable* construction that it was the *intention* of the treaty that the operation of the treaty should be *permanent*, and not depend upon the continuance of a state of peace

Thus, by a process of reasoning, a treaty overruling a fundamental law of England was not only put into effect in a particular case, affecting the title of English subjects, but was declared to be a perpetual obligation, indestructible by war

V Attention is invited to an admission of the Haytien Secretary of State of the Department of Justice in regard to the treaty and to the argument by which he sought to avoid its effect

It appears that on the 18th of November, 1884, the learned secretary, while Van Bokkelen was in prison, sent a communication to Mr Langston, United States minister at Port au Prince, expressing the following opinion

From my point of view, Mr Minister, I think that article 6 of the treaty gives to American citizens resident in Hayti the free access to the courts of the Republic in all cases where they are interested, under the same conditions as natives, but with this restriction, '*furnishing securities required in the case*"

Now, to enjoy the benefit of assignment to which a stranger is not admitted, conformable to article 794 of the Code of Procedure, by reason that if he was admitted to this benefit, not having any real estate guaranty to furnish, he might, by disapearing, render illusory all pursuit that might be directed against him, it is necessary, as in this case, that the American defendant furnish, according to the provision of article 6, the *securities required* by his creditors ("Foreign Relations,' 1885, p 486)

But the treaty does not say "securities required by his *creditors*," it says "furnishing security in the cases required," *i e* by law The "security" mentioned in the treaty is used in connection with "free access to the tribunals of justice," and must be taken in its ordinary sense, that is, for costs, or, in cases of injunction or attachment, for damages The Haytien law does not require that persons seeking the benefit of judicial assignment must own real property But the Haytien law does prohibit aliens from acquiring land And it seems to have occurred to the learned Secretary of State for the Department of Justice that if the word "security" in the treaty could be construed to mean *real estate*, and if creditors could insist

in the case of an alien applying for the benefit of judicial assignment, that he must be a land-owner in his own right, it would be impossible for Van Bokkelen, being an alien, to meet this condition. Admiration for the ingenuity of the learned secretary's method of making the treaty inoperative should not prevent the conclusion that the meaning of the treaty must indeed be apparent when it is necessary to use such means to escape its obligation.

The reasoning of the Court of Cassation is no less significant. Aliens "can only enjoy privileges derived from natural rights," and "nowhere in the treaty * * * is to be found that it confers upon the citizens of these two countries the right to exercise the judicial assignment of property." It makes no difference that in other countries aliens settled in business can make such assignments on the same terms as citizens, or that such liberty is as wise as it is humane. The treaty does not expressly mention "judicial assignment" as a reciprocal right of Haytiens in the United States and of Americans in Hayti, and inasmuch as its enjoyment "is attached exclusively to the quality of a Haytien," "Americans can not enjoy it in Hayti," although Haytiens do enjoy it in the United States, and although the treaty provides that "the citizens of the contracting parties shall have free access to the tribunals of justice, in all cases to which they may be a party, on the same terms which are granted by the laws and the usage of the country to native citizens, furnishing security in the cases required, and for this purpose they may employ in defense of their interests and rights such advocates, solicitors, attorneys, and other agents as they may think proper, agreeably to the law and usage of the country."

This seems to be one of the cases to which Vattell's first general maxim for interpretation of treaties applies, to wit:

It is not allowable to interpret what has no need of interpretation. When a deed is worded in clear and precise terms,—when its meaning is evident, and leads to no absurd conclusion,—there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it. If this dangerous method be once admitted, there will be no deed which it will not render useless. However luminous each clause may be—however clear and precise the terms in which the deed is couched—all this will be of no avail if it be allowed to go in quest of extraneous arguments to prove that it is not to be understood in the sense which it naturally presents (Law of Nations, book 2, sec. 263).

REVIEW OF MR. PRESTON'S ARGUMENTS.

Mr. Preston in his note of August 15, 1887, inclosing his "statement of facts and points of law" in the Van Bokkelen case, observes:

> This claim has been during the past years the subject of much correspondence, most of which has been published by the Government of the United States. There are also many judicial records and other papers connected therewith, some of which appear to be material to the determination of the case. For this reason they are brought to the judicial notice of the Honorable Secretary of State of the United States.

In thus submitting his statement, with certain exhibits on behalf of the Haytien Government, Mr. Preston sets forth several conclusions, which, in his judgment, are clearly supported by the facts and law of the case. The first of these is that—

> the case was decided only on an exception; that is to say, the Tribunal of Cassation of Hayti, confirming the judgment of the court below, *held*, that, Van Bokkelen being an alien, *the said court had no jurisdiction over the subject-matter.*

In the opening of his first brief Mr. Preston claims that Van Bokkelen should have proceeded in bankruptcy under the Code of Commerce instead of applying, as he did, to the Civil Court of Port au Prince for his discharge from jail on making a surrender of his property for the benefit of his creditors under articles 787–795 of the Code of Civil Procedure. It is sufficient to say that whether this objection could have been successfully raised or not against Van Bokkelen's proceedings, it was not raised while they were pending, and can not be considered now.

After a long discussion, much of which is but a repetition of the objections of the opposing creditors, and of the arguments of their counsel thereon, which were made to the Civil Court when Van Bokkelen's petition was pending, and which the court refused to consider, Mr. Preston gives a history of the proceedings in that matter (pp. 13–17), and refers for further details to the judgment of the Civil Court to Exhibit No. 4. But he quotes enough to show the entire incorrectness of his conclusion (quoted above) that the court decided that it was without jurisdiction. It clearly appears from the record (Exhibit 4) that the court took jurisdiction of the case in all its aspects and bearings, and assumed to decide and did expressly decide what effect the Treaty of 1864 had upon the provisions of the Haytien law excluding foreigners (*étrangers*) from the benefit of the "cession de biens." If the Civil Court of Port au Prince had dismissed the case (as our Court of Claims would have been obliged to do in similar circumstances) because the question involved arose under a treaty, that would have been a dismissal for want of jurisdiction. But the Civil Court of Port au Prince, out of all the ques-

tions submitted to it, chose to consider and determine only the question of Van Bokkelen's rights under the treaty; and, on appeal, the Court of Cassation affirmed the judgment that, notwithstanding the provisions of the treaty, the petitioner, because he was a foreigner, *i. e.*, a citizen of the United States, was excluded from the benefit of the "cession de biens." That the court below did not dismiss the case for want of jurisdiction, but undertook to judicially determine the effect of the treaty, is made clear beyond cavil, not only by the terms of its own judgment as found in Exhibit 4, but also by the decision of the Court of Cassation, on appeal, as printed in "Foreign Relations for 1885," p. 499.

But Mr. Preston, on the 21st page of his statement, not only contradicts his "conclusion" that the case was dismissed for want of jurisdiction, but goes so far as to criticize the decision which the Civil Court rendered in regard to the effect of the treaty. He says:

> Therefore, at the utmost, the judges of the court below erred in resting their decisions upon grounds erroneous or open to discussion, and the only error, if any, which may possibly be charged, was to set forth as a ground for their judgment that Van Bokkelen's case did not fall within the scope of the treaty, *instead of stating simply that petitioner had not taken the steps required to be entitled to the right guaranteed him by said treaty stipulations.*

Such a decision would, indeed, have created an entirely different situation. There would have been no denial of a precious right which, in the judgment of the United States, had been secured by the Treaty of 1864 to its citizens residing and doing business in Hayti—no breach of a sacred conventional obligation entailing fatal injuries on one and imperiling the interests of all the citizens of the United States residing and doing business in that country. Unless the court had been palpably prejudiced and unfair, a decision that Van Bokkelen's petition must be denied on grounds that would have necessitated the denial of a Haytien's petition, would have occasioned no reclamation or remonstrance on the part of the United States, This appears from Mr. Bayard's letter of March 28, 1885, to Mr. Langston ("Foreign Relations," 1885, pp. 507–510), which, with all the diplomatic correspondence on the subject, will be considered by the Arbitrator.

Mr. Preston devotes the bulk of his statement on behalf of the Haytien Government to a support of the proposition that the Arbitrator should now make the decision which the Civil Court of Port au Prince, with the whole case before it, refused to make, *i. e.*, that Van Bokkelen's petition was inadmissible because of fatal defects in his proceedings or in his conduct. We shall refer more particularly to this extraordinary contention when we come to the examination of the second statement or brief which has been put into the case by the Haytien Government. We now desire to make it clear that the Court of Cassation expressly decided that the Civil Court was right not only in its construction of the treaty, but also *in its refusal to examine and decide the other questions which were raised in the original proceedings.* This appears from the following passage in the opinion of the Court of Cassation ("Foreign Relations," 1885, p. 499).

Therefore, it follows, from that which precedes, that the judgment denounced has made a good and just application of articles 769 of the Code of Civil Procedure and 569 of the Code of Commerce, and a sound interpretation of the articles 6 and 9 of the treaty above cited. For such reasons, and *without there being any necessity of passing on the result of non-acceptance raised by the parties* (*i. e.*, the objections of opposing creditors below), the court rejects the appeal made by Mr. Charles Adrian Van Bokkelen against the judgment rendered May 27, 1884, by the Civil Court of Port au Prince.

The Government of Hayti, judging by Mr. Preston's representations on its behalf, and by the opinion of the Haytien Secretary of State of the Department of Justice, quoted elsewhere, seems to admit, if we do not altogether misapprehend their meaning, that the treaty has been misconstrued by the Haytien courts. We have already quoted Mr. Preston's criticism of the judgment of the Civil Court under which Van Bokkelen was kept imprisoned, closing with the suggestion that the decision should have been "simply that the petitioner had not taken the steps required to be entitled to the *rights guaranteed him by said treaty stipulation.*" In an earlier part of his statement Mr. Preston says:

A few remarks on these proceedings appear to be necessary before the discussion of the points of law is reached. In the first place, these proceedings clearly show that the case of petitioner was *dismissed* on an *exception*, and that exception was sustained by the Tribunal of Cassation. *That the judgment on said exception was maintainable is not a proposition which we expect to urge in this statement* (*ibid*, p. 18, near the top).

And he closes that statement as follows:

Such is the claim of Van Bokkelen, and unless new and further points are raised on behalf of claimant the *Government of Hayti expects to confine the presentation of its case to what is stated in this present brief.*

Of course this will not prevent the Haytien Government from submitting to the Arbitrator the best argument it can in support of the proposition that the treaty was not intended to secure for citizens of the United States residing and doing business in Hayti the benefits of the judicial "cession de biens;" but it does seem to suggest that the Haytien Government would much prefer to rest its case on some ground other than the action of its highest judicial tribunal.

The assertion that the case was "dismissed," into which the Haytien Minister has been misled, is wholly in error, and the error is like that in his allegation that the court decided that it was without jurisdiction. The record (Exhibit 4) shows beyond question that Van Bokkelen's petition was denied on the ground that he was a foreigner and that the Treaty of 1864 did not relieve him from the disability attaching to foreigners under article 569 of the Code of Commerce and article 794 of the Code of Civil Procedure. He appealed from this decision, and, as we have seen, the Court of Cassation not only affirmed the judgment as a sound construction of the treaty, but said expressly that the court below was right in refusing to examine and determine the other questions which were raised in the original proceedings.

But it seems to the Haytien Government absolutely necessary to ignore, if not to repudiate, the decisions of its Civil Court and Court of Cassation

and to try Van Bokkelen's petition now, just as if these decisions had never been rendered and enforced against the deceased petitioner, or rather, as will appear hereafter in the progress of our examination of the second statement of the Haytien Government, to obtain without any proper trial a decision against Van Bokkelen on the objections raised in the original proceedings, on the extraordinary ground that the questions which the Civil Court refused to examine and decide must now be taken as having been decided against him

In the 7th division of his first statement the Haytien Minister renews his efforts to get behind the situation, which has been fixed by the decision of the Haytien courts in this case, and to put the Arbitrator in the place of the judges before they construed the treaty, and when they might have decided Van Bokkelen's application upon its merits With this end in view, Mr Preston remarks

At the utmost the petition of Van Bokkelen was dismissed by the tribunal of Port au Prince for want of jurisdiction, this was done upon an exception raised by the defendants to the suit if so, the court or high contracting parties, as the case may be, who for some reason may acquire thereafter jurisdiction over said case, *are bound to inquire into the merits of the subject matter as they came before the judges who sustained the exception raised by the party defendant* In *John W Green et al vs the United States* (18 C Cls R, 93) the Court of Claims said

"2d The defendants claim that the judgment of dismissal, as set forth in the 5th finding of facts, is, under section 1093 of the Revised Statutes, a bar to recovery here * * * It will be remembered that this court is forbidden to take jurisdiction of a claim more than six years old, and the court having found as a fact that the claim in that case was more than six years old, dismissed it for want of jurisdiction Was this a final judgment on the claim? The claimants come to the threshold of the court and pray a hearing They are informed that the court is forbidden by the statute of limitation to listen to their prayer They are turned away This is not an adjudication of their claim, but a refusal to hear it Certainly this should not deprive them of a hearing before a tribunal otherwise authorized to entertain their petition (*Hughes's Case*, 4 Wall, 232, *Spencer's Case*, 5 C Cls R 34)"

Under the rules thus laid down by the Court of Claims, the exception sustained by the courts of Hayti in the Van Bokkelen case *being now set aside by the high contracting parties, the merits of the case are wholly before them* If so, the next question is whether they may hold that a citizen of Hayti under circumstances identical to those presented in the case of Van Bokkelen could be authorized to make an assignment under article 1055 of the Civil Code of Hayti *This must be answered in the negative, and thus the case of Van Bokkelen is finally disposed of*

Mr Preston's effort still is to show that there has been no trial of the petition which Van Bokkelen presented to the Civil Court of Port au Prince to be allowed to take the benefit of the judicial "cession de biens"—that his petition was dismissed for want of jurisdiction—and that the Arbitrator is now to take the place of the Civil Court of Port au Prince and try the questions which it refused to consider No better illustration of Mr Preston's misapprehension of the situation could be found than in Green's case, which he has cited from the Court of Claims (*supra*) Green's claim had been presented to the Treasury Department within six years from the time it accrued, and while it was still pending there, but long after the statutory

limitation had expired, a petition was filed by the administrator of the original claimant in the Court of Claims, and the court dismissed it on the ground that the "claim accrued on the 3d of April, 1872, and the petition not having been filed until the 14th of March 1881, the action is barred by the statute of limitation" (18 C. Cls. R., 100). Subsequently the Treasury Department referred the case to the Court of Claims under section 1063 of the Revised Statutes, and on this second presentation of the case, overruling the objection of the Government that the claim was barred by the previous judgment of dismissal, the court held, upon the authority of *Lippitts' Case* (100 U. S., 663), that the proceeding in the Court of Claims was a *continuation* of the proceedings in the Department, and, *if begun there in time*, could be heard in the court subsequently. In other words, the previous dismissal of the case on the ground that it was barred by the statute of limitation was held not to be a final judgment on the *claim* when it came again to the court, through the Treasury Department, free from the bar of the statute.

But in Van Bokkelen's case, as appears from Exhibit 4, after the presentation of his petition, the proceedings went on before the court from day to day; twelve of his creditors appeared; two of them made objections; the objections were placed upon the record, and were traversed at length and with great particularity and earnestness by the petitioner. All these objections and the petitioner's replies are summarized by the court in its judgment, according to the requirements of the Haytien code. One of the objections was that the petitioner was a citizen of the United States, and that the laws of Hayti excluded foreigners from the benefit of the judicial assignment. The petitioner in reply set up the Treaty of 1864, and also the rule of public law that a nation allowing foreigners to establish themselves in business and make homes within its territory is bound to give them access to the courts on the same terms as merchants who are citizens, in respect of all civil or commercial concerns as distinguished from political. Instead of dismissing the case for want of jurisdiction, the court took judicial notice of the treaty (against an objection of one of the opposing creditors that the treaty had not been properly pleaded) and construed the treaty, and decided that, notwithstanding its provisions, the petition must be denied because the petitioner was a foreigner.

Thus one of the petitioner's pleas—and the only one in which his sponsor, the Government of the United States, can be considered as an interested party—was judicially tried and determined against him by the courts of Hayti. And that determination denied him justice, because it denied him the right, to which he was entitled under the treaty, to have his application for release from imprisonment decided on the merits by those courts.

Mr. Preston alludes to another case reported in 20 La. Ann., 364, but it has no more relevancy to the question now at issue than has the case he cited from the Court of Claims. The opinion which he quotes from the Louisiana case lays down the familiar principle that "the discharge by the creditors can have no legal effects against the creditor making opposition unless

predicated upon a strict compliance with the indispensable demands of the insolvent law." The question of such compliance with "indispensable demands" in Van Bokkelen's case could have been tried in the Civil Court and taken up on appeal to the Court of Cassation if the Civil Court had given effect to the treaty and considered his petition on its merits, although it is not probable that any further opposition would have been made in view of the fact that by Haytien law the judicial assignment only discharges the debtor from his debts to the extent that they are paid by the proceeds of the sale of the property assigned (Code Civile, article 1055, last section). Mr. Preston's contention that the other questions raised in the original proceedings but not decided should now be tried on the merits could be entertained only in case the creditors on the one hand and the deceased upon the other hand were the parties before the present Arbitrator.

The Haytien Minister contends in the 8th division of his first statement that if Van Bokkelen had been admitted to make an assignment, one of his judgment-creditors, St. Aude, who had not been summoned and did not appear in the preliminary proceedings, would have opposed the discharge from imprisonment, and must have succeeded because the decree which he had obtained from the Court of Cassation was "partly founded on an allegation of fraud, which, as between Van Bokkelen and St. Aude, had become *res adjudicata*." If the Haytien Minister means to say that the decree determined that Van Bokkelen had defrauded St. Aude, or rather that the judgment below sounded in fraud, we reply that the record (Exhibit 3) does not warrant the statement. But even if there had been such a judgment, and it made the question of fraud in that particular transaction *res adjudicata* between the parties, it would not have concluded the court on the question whether Van Bokkelen should be discharged from imprisonment. One may have suffered judgment in a civil action sounding in tort, and may yet not be within the prescription of article 794 of the Haytien Civil Code of Procedure, or article 569 of the Code of Commerce. Perhaps Mr. Preston may think thata debtor against whom a judgment sounding in tort has at any time been recovered, must, when the question of his discharge from prison arises under the "cession de biens," be found by the court to be a fraudulent bankrupt—one of the prescribed *banqueroutiers frauduleux*. But this is by no means the case, the real question being, not whether the petitioner may not at some prior period in his life have been guilty of fraud, but whether the proffered assignment was made in good faith, and whether, in permitting him to make it, the court would be aiding him to do some injustice to his creditors and reserve an improper benefit to himself.

It is true, as stated by Mr. Preston, that the General Term of the Superior Court of the city of New York refused to vacate the order of arrest which had been granted in the suit of *Hovey and Dole* vs. *McDonald*. At that time, however, McDonald was not held on execution, but under an order issued at the commencement of the action, upon conclusive proof of the most de-

liberate and contumacious fraud (13 J. & S., 45 N. Y. Superior Ct. Rs., 606). Although imprisonment for debt has been abolished in New York, defendants may be arrested and held to bail in civil actions for certain causes. In these actions there is a combination of criminal and civil procedure in which punishment for the wrong is employed as a means for obtaining redress for the person who has suffered the injury; or, to use the words of Mr. Chief Justice Daly in *Audriot's Case* (2 Daly, 35), referring to the Stilwell act—

> while it was thus the intention of the Legislature to sweep away a feature so disagreeable to the intelligence of the age (imprisonment for mere debt), it was equally their intention to subject the fraudulent debtor to the rigor of imprisonment; and by the passage of the act to furnish to the defrauded creditor additional and more summary means to coerce the payment of his claim (citing *Townsend* vs. *Morrill*, 10 Wend, 582; *Spear* vs. *Wardell*, 1 N. Y., 144).

But no distinction is made between citizens and foreigners, and McDonald, who was a British subject, and never made restitution of the large sum which he had wrongfully converted to his own use, was released under the act of 1886, limiting the time for which the body of a fraudulent judgment-debtor can be held on execution to six months at the longest.

In Van Bokkelen's case, however, it was not for fraud that his petition was denied, but because he was a citizen of the United States; and it can not now be presumed that his discharge would have been opposed by St. Aude, or that such opposition would have been successful.

The Haytien Government wants to have all the possibilities lying behind the "if," which it invokes so frequently, determined against Van Bokkelen. We say that there is no "if" in the question before the Arbitrator — that he is to decide upon what was actually done — not upon the various and conflicting possibilities which suggest themselves to the imagination when we suppose that some other course had been taken by the Haytien courts.

In the 9th division of his first statement, Mr. Preston makes the remarkable assertion that "if Van Bokkelen was arrested and deprived of his liberty for a certain period of time, *it was not done by the request or by any act of the Haytien Government.*" And this freedom of Hayti from liability for the acts of her courts in denying to an American citizen a most important privilege secured to him (as we claim) by treaty, is asserted on the ground that "civil suits were brought against him by a citizen of New York." We scarcely need to say that it makes no difference who puts the laws in motion. In the administration of its laws, a government acts through its courts. In the judicial domain the courts are the government. If the laws (including treaties) are rightly executed by the courts, no reclamations can properly be made against the government. Under this novel theory of Mr. Preston's, all that a government would need to do to escape responsibility for a denial of justice by its courts would be to plead that justice was denied at the suit of one of the fellow-citizens of the victim. This proposition is sufficiently refuted by saying that it would reverse the relation of the courts to parties before them, and render the judicial tribunals, whenever a foreigner is plaintiff, helpless and irresponsible instruments of injustice.

Mr. Preston, alluding to Mr. Langston's statement that the Haytien Government had provided for the payment of the judgments against Van Bokkelen (p. 28, near the top), says:

> In one respect at least this statement is inaccurate; private individuals satisfied the judgments on record, and thereupon Van Bokkelen was released. Where the money applied to satisfy said judgments came from is a mere matter of surmise.

The admitted facts of the case, the situation at the time of Van Bokkelen's release, and the guarded language of the Haytien Minister just quoted, seem to leave no doubt in regard to the *source* of the funds with which "private individuals" satisfied those judgments. When the Haytien Government persisted in keeping Van Bokkelen in jail for the reason that as a citizen of the United States he was not entitled to take the benefit of the judicial assignment act, a new suit was instituted in which the United States was plaintiff and Hayti herself was defendant. The cause of this international controversy was Van Bokkelen's continued imprisonment, which, the United States maintained, was in violation of the Treaty of 1864; and to bring this controversy to a close, and perhaps with a view of limiting its pecuniary liability, the Haytien Government delivered Van Bokkelen's body to the Minister of the United States at Port au Prince. But in making that delivery the Haytien Government did not recognize its obligations under the treaty; on the contrary, it delivered him as a person against whom there was no longer any legal cause of detention — not as a citizen of the United States for whom his Government had secured by treaty "free access to the tribunals of justice in all cases to which he might be a party on the same terms which are granted by the laws and usage of the country to native citizens."

Replying to an observation of Mr. Bayard, that "it was only when Van Bokkelen was denied certain rights which a Haytien debtor would have under the insolvency act, that this Government claimed his treaty rights," Mr. Preston says in the 10th division of his first statement (p. 28) that "under like circumstances a Haytien citizen would have been sent to jail and kept there until he had satisfied his judgment creditors." If a Haytien citizen, imprisoned for debt, had petitioned the Civil Court for his discharge under the judicial assignment act, the presumption is that he would not have been remanded to jail until the material questions raised in the proceedings had been judicially determined against him. But, as we have seen, although Van Bokkelen submitted himself to the jurisdiction of the court, and sought its judgment on all the allegations made against his discharge by his opposing creditors, his petition was denied, and he was kept in prison on the sole and exclusive ground that he was a citizen of the United States, and that the treaty did not entitle him to the benefit of a judicial assignment on the same terms as citizens of Hayti.

In drawing his first statement (p. 29) to a close, Mr. Preston charges Van Bokkelen with falsehood and fraud, because his representations in regard to his financial condition were different at different times. These charges are formulated, as follows:

In his statement of assets and liabilities, of February 16, 1883, Van Bokkelen claim to be solvent In his pleadings, in 1884, when he petitioned the tribunal for making an assignment, he pleaded that he was insolvent * * * In the presence of such bold, open contradictions, we submit that it hardly matters in the case under consideration which horn of the dilemma Van Bokkelen takes If he was solvent he was guilty of a gross fraud in attempting to cheat his creditors, who had either uncontested claims or who had obtained judgments against him If he was insolvent he was bound to prove his good faith, and in order to do so he was in duty bound to comply with the law, which he did not do, and upon this ground he could not avail himself of his American nationality He was bound to stay in jail until the judgments against him were wholly satisfied, either by himself or by some third person who consented or volunteered to do it

But he claimed, and the Government of the United States maintains, that he was entitled under the treaty to prove his good faith and obtain his discharge from prison by surrendering all his property for the benefit of his creditors Surely a debtor can not, with any show of justice or reason, be charged with "attempting to cheat his creditors" when he seeks to assign all his property for their benefit, whether his assets are greater or less than his liabilities There is not the slightest suggestion in the record that he was trying or had ever tried to keep back anything or reserve any benefit for himself And as to the different estimates which he made of his financial condition at different times, the record shows, as we have already remarked, that among his assets were claims against Haytien citizens for large amounts, and a claim against the Haytien Government for breach of contract, also, that he and his family were interested in Haytien bonds, which, although greatly depreciated, might yet be honored by the Government ("Foreign Relations," 1884, pp 306, 307, *ibid*, 1885, p 532, top) His pecuniary situation, therefore, might look hopeful at one time and desperate at another, and in February, 1883, his claims might have seemed collectible and his condition solvent, while in March, 1884, when he looked at his affairs from the inside of "the common jail of Port au Prince," into which he had been thrust illegally while sick in body and mind, they might have seemed hopeless After all the injuries inflicted upon him in Hayti, despite his rights as an American citizen under the treaty, it is to be regretted that it should be found necessary to make these charges of fraud, which can only aggravate the original wrongs and injuries of which he was the victim While he was alive his imprisonment, after he sought leave of the court to make an entire surrender of his property for the benefit of his creditors, was never defended by the Haytien authorities on any other ground than his foreign citizenship It was expressly on this ground, and on this ground only, that the Civil Court denied his petition, and it was expressly on this ground, and this ground only, that the denial was affirmed by the Court of Cassation In all the diplomatic correspondence, including elaborate defenses of Hayti's position in this matter by her highest officers of justice and state, no other ground is mentioned And it was on this ground, and this ground only, that the President of Hayti vindicated the action of his Government in that portion of his annual message which he devoted to this case ("Foreign Re-

lations," 1885, pp. 535, 536). Only now and here have these injurious charges of fraud which were never considered by the courts or the Government of Hayti been advanced on the part of that Government. And while their evident object is to mitigate damages, or obscure the fact that it was solely in his character of an American citizen that the Haytien Government denied him justice and did him such wrong, we are sure that no such effect will follow.

In his second statement or brief, which he has submitted on behalf of the Haytien Government, Mr. Preston abandons his proposition that Van Bokkelen's case was dismissed for want of jurisdiction, and claims that in all its aspects it was before the court and was finally disposed of by its decision. And, although, as we have seen, the court denied Van Bokkelen's petition for no other reason than that he was a citizen of the United States, Mr. Preston in different language renews his previous contention that the Arbitrator should now examine all the other questions that were raised in the case, and if he is of opinion that for any other reason the court might properly have made the same decision, then he must decide in favor of the Haytien Government.

Mr. Preston inquires:

> Could a citizen of Hayti under circumstances identical to those disclosed in Van Bokkelen's case make an assignment and thus liberate himself from imprisonment?

Then, answering his own question, he adds:

> It is submitted that the record of said judgment discloses such a state of facts as to disqualify a citizen of Hayti from exercising the very right that Van Bokkelen claims for himself.

Now, as has already been shown, the record of the judgment makes it clear that the court rejected Van Bokkelen's petition solely and exclusively because he was a foreigner, *i. e.*, a citizen of the United States; and the same record shows that every other objection urged by the opposing creditors was traversed by the petitioner either as being false in fact or insufficient in law. For example, it was objected that he had not shown his misfortunes as required by the code—pecuniary losses from no fault of his own. He replied through his counsel, Mr. Thebaud, that his misfortunes were patent and matters of public notoriety. An examination of Exhibit 4, pp. 23–25, will show with what particularity the petitioner explained his losses and defended his good faith.

Not one of the issues so raised was ever decided by the Haytien courts. On the contrary, it having been held that Van Bokkelen, being a foreigner, could not claim the privilege of the "cession de biens," it was declared by the courts to be "useless to examine the other points and pleadings of the parties relating to the form and merits of the demand." Hence no allegation of irregularity or want of good faith made in the original proceedings can now be treated as having been determined against the claimant.

The Haytien Minister next introduces a translation of the judgment, which, according to Haytien procedure, is a summary of the proceedings, prepared by the court, including, in this case, the petition, the objections of opposing

creditors, the petitioner's reply, and the motions and arguments of the respective counsel. Whereupon the minister remarks (p. 9):

> The aforesaid judgment shows clearly that the court had before them the whole question as raised by the pleadings.

Then, quoting from a letter in which Mr. Hamilton Fish referred to the familiar and indisputable rule that "in order to justify reclamation against the final decision of a court of last resort, it must be shown that there has been a manifest failure of justice," Mr. Preston makes the remarkable claim to which we have alluded, and states the scope and effect of the judgment rendered upon Bokkelen's petition in the following language (p. 10):

> In the light of this rule of construction, the judgment of the tribunal of Port au Prince *must be regarded as a final disposition of all the questions raised by the pleadings;* and, if so, it must be held by this Government that Van Bokkelen was not a bona fide debtor entitled to the *benefice de cession* as contemplated in article 1054 of the Civil Code.

There are two fatal objections to the proposition that the Government of the United States is concluded by the judgment of the Haytien courts:

1. If anything is well settled in public law it is that one of the parties to a treaty can not properly claim that its interpretation of the treaty, whether the interpretation is made by its legislature, judiciary, or executive, is conclusive upon the other party. On this point Vattel observes:

> The third general maxim or principle, on the subject of interpretation, is that *neither the one nor the other of the parties interested in the contract has a right to interpret the deed or treaty according to his own fancy.* For if you are at liberty to affix whatever meaning you please to my promise, you will have the power of obliging me to do whatever you choose contrary to my intention, and beyond my real engagements; and, on the other hand, if I am allowed to explain my promises as I please, I may render them vain and illusory by giving them a meaning quite different from that which they presented to you, and in which you must have understood them at the time of your accepting them. (Law of Nations, book 2, chap. xvii., sec. 265.)

Referring to the controversy between the United States and France, when the legislative power of the latter State refused to vote the moneys required by the Convention of 1831, by which indemnities were provided for spoliations on American commerce, Mr. Wheaton said:

> Neither government has anything to do with the auxiliary legislative measures necessary, on the part of the other State, to give effect to the treaty. The nation is responsible to the government of the other nation for its non-execution, *whether the failure to fulfill it proceeds from the omission of one or other of the departments of its government to perform its duty in respect to it.* The omission here is on the part of the legislature; but it might have been on the part of the judicial department. *The Court of Cassation might have refused to render some judgment necessary to give effect to the treaty.* The King can not compel the chambers, neither can he compel the courts; *but the nation is not the less responsible for the breach of faith thus arising out of the discordant action of the internal machinery of its constitution* (Lawrence's Wheaton, p. 459, note).

The general rule is laid down by Wharton, in conformity with Vattel and Wheaton, as follows (International Law Digest, vol. 2, sec. 238):

A construction of a treaty, also, by the courts of one of the contracting sovereigns *can only have municipal operation;* nor can such construction be set up, even by the sovereign by whose courts it is pronounced, as an authority when conducting negotiations with the other sovereign as to the meaning of the treaty (*supra*, secs. 9, 133, 139). *That meaning is a matter of international settlement.* If the parties can not agree in reference to it, it must be referred to arbitration or, as the last resort, to war.

II. We have already taken objection to the claim of the Haytien Government, that the question of Van Bokkelen's good faith must be held to have been finally determined against him by the Civil Court and the Court of Cassation. That objection is that Van Bokkelen's good faith was one of the very questions which, although it was submitted by the petitioner and the opposing creditors and argued by their counsel to the court, the court refused to decide, and said it was useless to examine, for the reason that, whether an honest and unfortunate debtor or not, Van Bokkelen was admittedly a citizen of the United States, and by that fact alone was excluded from the benefit of the "cession de biens." The court was of opinion that it was of no use to consider whether the petitioner's proceedings had been regular or whether his insolvency was the result of misfortune, so long as the question remained undecided whether the treaty entitled him to claim his discharge as if he were a citizen of Hayti. So the court took the question of the petitioner's right under the treaty into consideration, and decided that it did not entitle him to the benefits of this wise and merciful provision of the Haytien law. The court undoubtedly could have decided, if of that opinion, that his proceedings were irregular, but then they could doubtless have been amended. The court could have ordered testimony to be taken on the question of his good faith and financial misfortunes if his own statements and his counsel's brief upon those points had left any serious doubt in the minds of the judges; but that would have taken time, and the effect of the treaty would have been left undetermined. If the court had not desired to construe the treaty, and had felt sure that the petitioner's conduct had been such as would have prevented him from obtaining his discharge even if he had been a citizen of Hayti, the court could have dismissed the petition on that ground. If probabilities may be considered, it does not seem unreasonable to surmise that the court would have preferred to decide against Van Bokkelen for some cause that would have prevented a citizen of Hayti from taking the benefit of the "cession de biens," had it seemed clear to the judges that any such cause existed. But seeing that Van Bokkelen made such an unreserved submission of his case, and all the questions involved, to the court, and that the court kept him in prison simply and solely because he was a foreigner, it is wholly inadmissible, now that he is dead, to try the questions which the court refused to consider when a fair trial was possible.

We respectfully submit that for all the purposes of this arbitration it must be held that every question is closed, except the one question whether the decision of the Civil Court of Port au Prince that the treaty did not entitle Van Bokkelen to claim his discharge under the judicial assignment act was a denial of justice. For the purposes of this arbitration it should be held

that the petitioner would have been discharged from prison if the court had decided that the treaty gave him the right to make the application on the same terms as Haytien citizens. He submitted the question of his misfortunes and good faith to the court. The court could have decided, if of that opinion, as we have already suggested, that he had been guilty of such conduct as would have excluded a Haytien citizen from the desired privilege, and, therefore, was not entitled to his discharge. But the court made no such decision. The presumption is that he was honest. If his admitted insolvency raised a presumption of dishonesty, that presumption was rebutted by his explanation, which is summarized in the judicial record of the proceedings (Exhibit 4, pp. 23–25).

Mr. Preston advances in his second argument or brief the novel idea that under article 148 of the Haytien Code of Civil Procedure the judgment in the Van Bokkelen case was null and void. His first proposition in regard to the action of the court is, as we have seen, that it dismissed Van Bokkelen's case for want of jurisdiction; his second proposition is that "the judgment of the tribunal of Port au Prince must be regarded as a final disposition against Van Bokkelen of all the questions raised by the pleadings;" and his third proposition is that Van Bokkelen did not exhaust the legal remedies afforded by municipal law, because, on account of an omission on the part of the judges to "pass upon" all of the questions raised, the judgment was null and void, and Van Bokkelen was therefore entitled to the extraordinary remedy known as "la requete civile." It is evident from an examination of the article of the code referred to by Mr. Preston that the judges are not required to "pass upon" all the points raised in the pleadings in the sense of judicially determining them, but only of taking notice or mentioning them in the judicial summary of the proceedings which in Haytien procedure constitutes the judgment. And one of the objects of this requirement seems to be to furnish evidence to the parties in the judgment itself that none of their points have been overlooked. Furthermore, as observed by the Third Assistant Secretary in his memorandum (p. 8)—

> it also appears that the re-opening of the judgment under that article can be had only "upon the request of those who have been parties or of those who have been duly brought into court."

Mr. Preston's quotations from the decision of the French Court of Cassation in *Napier et al.* vs. *The Duke of Richmond* (pp. 14–16 of second brief) do not sustain the views which he advances. If it could be said with any show of reason in regard to the intention of the treaty of 1864, for which we contend, as these illustrious judges said in regard to the intention which had been ascribed in the judgment below to the treaty which they were considering, that "it is impossible to suppose that the intention of the plenipotentiaries was to control the laws of descent *between co-heirs*, to grant to *one* the whole property in the land to the exclusion of the others *without any indemnity to these latter;*" or that "such an intention would be *in conflict with all the provisions of the treaty,*" then, indeed, the position of

the Haytien Government would be very different. But, in any case, as we have seen from the authorities already cited, Great Britain could have made reclamation against France for denying justice to the Duke, if Great Britain had considered that France had denied him any right to which he was entitled by treaty, just as the United States can now call Hayti to account for refusing to treat Van Bokkelen as a Haytien citizen in the matter of his application for the benefit of judicial assignment according to articles 6 and 9 of the Treaty of 1864 between the two Republics.

THE QUESTION OF DAMAGES.

It has been shown that Van Bokkelen's original arrest and imprisonment on the 5th of March, 1884, were adjudged by a Haytien court to have been illegal, and that if he had not been thus wrongfully put in jail, his imprisonment could not have been continued as it was at the instigation of his creditors by means of the process of "recommendation" already described. His imprisonment from the 5th of March, 1884, until he applied for the benefit of judicial assignment on the 24th of the next month, is admittedly without justification in law. The refusal to admit him to the benefit of judicial assignment, and the consequent continuance of his imprisonment on the ground that he was an alien, we have shown to be in violation of his rights as a citizen of the United States under the Treaty of 1864.

But there are certain elements other than the denial of justice and the unlawful invasion of that personal liberty so highly prized and jealously guarded by the law, which, we submit, should be considered by the Arbitrator in determining the amount of damages to be awarded. Van Bokkelen's brokerage business had been prosperous and valuable. It was the uncollectable debts due to him from Haytiens, and the depreciation of Haytien bonds that had embarassed him. If he had not been imprisoned he would have had opportunity to retrieve his losses. This opportunity was not only taken from him, but his credit and standing in the community were fatally injured.

The state of his health is also to be considered. It was precarious. He was suffering from rheumatism and disposed to consumption; his condition was made known to the authorities by his written statements, and by certificates from three physicians. He was thus less able to endure the mental and bodily sufferings entailed upon him by his imprisonment. This is an aggravation rather than a mitigation of the injury.

The condition of the jail is also to be considered. It was not a debtors' prison, but the common jail of Port au Prince. In his appeal to Mr. Frelinghuysen, March 19, 1884, Van Bokkelen speaks of being "confined with felons and lunatics," and "surrounded by filth;" and of the danger to his

health in such "a Calcutta hole" ("Foreign Relations," 1884, p 306) Mr Langston secured Van Bokkelen's removal to the "military hospital," in the course of the summer, and, in advising Mr Frelinghuysen of the change, remarked "that the prison of this city is really not fit for the confinement of debtors, that the military hospital is very little better, and that Mr Van Bokkelen is quite unwell, suffering from rheumatism and predisposition to consumption (*ibid*, p 308)" In a letter to Mr Frelinghuysen, dated November 15, 1884, Van Bokkelen's father spoke of him as "confined in a hospital amongst incurable, liable at any time to be returned to the vile prison from which, through the kindness of Mr Langston, he was removed" (*ibid*, p 336), and Van Bokkelen himself, in a letter written on the 19th of the same month to Mr Frelinghuysen, begs that if not immediately released he "may be put in some place fit for a man more or less used to the comforts of a home, for where I am now I am constantly in contact with persons having the seven year itch, yellow fever, with sores infecting the air—a well man is liable to acquire sickness, much less a sick man to get well" ("Foreign Relations," 1885, pp 479, 480) In January, 1885, Mr Langston closes a dispatch to Mr Frelinghuysen as follows "Meantime, our citizen, as I believe and maintain, is illegally restrained of his liberty, and I have demanded his freedom It does not matter that by reason of the feeble condition of his health, on my demands, he is permitted to occupy quarters, miserable enough, at the military hospital of this city" (*ibid*, p 485) In a communication to the Haytien Government demanding Van Bokkelen's "immediate release," Mr Langston speaks of Van Bokkelen's "feeble and declining health" (*ibid*, p 492) His desperate condition—bodily and mental—is expressed in the following letter.

Mr C A Van Bokkelen to Mr Frelinghuysen

PORT AU PRINCE PRISON,
December 18, 1884

MR SECRETARY

The persistent refusal of the Government of Hayti to grant my release on rights accorded by the treaty and demanded by the Hon J M Langston in the name of the United States, and as against the rules of all civilized nations, will make me liable at any moment to be thrown back into prison and *probable death*, unless Mr Langston is sustained by the Department in his demand that the articles 6 and 9 fully accord me the simple right of liberty of my person, not a discharge from indebtedness

My only resource will be to fly the country and seek justice on my native soil, being obliged to abandon my interest here, all on account of my nationality, which can clearly be proved to amount to thousands of dollars in landed property [in right of his wife] and cash accounts Even now being on the ground and unable to have justice, what would my absence be? I have already suffered, my credit and business ruined (also my health), which cannot be paid by $100,000 and to which our minister here can testify

I again ask that the Department inform me, by first occasion what its intentions are in regard to having justice done me, that I may put my life in security before the present administration leaves office, that I may be in a position to continue to try and have justice done me

I am, &c,

C A VAN BOKKELEN

Soon afterwards, the Court of Cassation affirmed the judgment of the court below, denying the prisoner's petition on the ground that he was an alien, and shortly thereafter he was removed from the military hospital and confined again in the common jail, from which he appealed once more to his Government

Mr C A Van Bokkelen to Mr Bayard

IN PRISON, PORT AU PRINCE,
HAYTI, *April 9, 1885*

MR SECRETARY

On the 28th of June, 1884, at the request of the United States Minister Resident, and in accordance with instructions from Washington, I was transferred from this loathsome jail to the military hospital, where I was allowed to remain until the 21st March, when I was ordered by the director, in obedience to instructions received from the attorney of the Government, on a certificate of the doctor that I was a well man, to be conducted to the prison, with felons and thieves

I protested in writing to the inspector general, and furnished proof of the fact that my condition was worse than when I entered the hospital, and that during my stay there no doctor (public) had prescribed for me, nor had I been supplied either with food or medicine, but was compelled at times to buy water for use

The director immediately ordered my installment at the hospital, the doctor informed the Government commissary of the fact, who, in turn, informed the Minister of Justice, who approved the act of humanity

On Holy Thursday the inspector general, accompanied by the director, called and gave me the assurance that, knowing my condition, I should not be disturbed

Judge of my surprise when, on the 4th April, at 12 m, I was made to walk in the hot sun, with three plasters on me, to the jail, where I was confined without a word of explanation, and where I now am

I am, &c,

C A VAN BOKKELEN

For six weeks longer he was kept in jail, and then, after an imprisonment which had lasted nearly fifteen months, he was conducted on the 27th of May, 1885, by an officer of the Haytien Government from the common jail to the United States legation and delivered to Mr Langston, the United States Minister

It is difficult adequately to portray the misery and wretchedness of Van Bokkelen's condition during his imprisonment For to his physical suffering must be added the mental horror and anguish arising from his environment, the sense of injustice and humiliation, the alternations of hope and despondency, his anxiety for the future—for himself, his wife, and his children—deepened by his consciousness of approaching death That he keenly felt the degradation and shame of his imprisonment appears from the demands which he made in his last statements of his case to the Secretary of State, that the Haytien Government should not only pay damages, but make "some proper and public announcement" so that all might know that it was "not for any criminal act" that he had been "thrown into a loathsome prison" (*ibid*, p 539)

In all free communities personal liberty is sacred The men who sit on juries are apt to visit its invasion with extravagant penalties A famous case

of false imprisonment was tried several years ago in this District. Congress through its Speaker ordered a witness into custody. He was as well-housed and entertained as he would have been at a first-rate hotel. But he was wrongfully held—he was not his own man—and one jury after another gave him verdicts for thirty-five days luxurious imprisonment which the courts felt obliged to set aside as excessive. The first verdict was $100,000, the second $60,000, and the third $37,500. Finally the court said that if he would file a remittitur of $17,500 of the last verdict, he might have judgment for $20,000 (*Thompson* vs. *Kilbourn*, McArth. and Mackay, p. 401).

A learned and interesting review of the subject of damages for false imprisonment is to be found in Mr. Justice Cox's opinion in that case. Kilbourn recovered about $600 a day for his detention. But there could scarcely be a more marked contrast between conditions of imprisonment than Kilbourn's and Van Bokkelen's. For each day of his imprisonment Van Bokkelen demanded, before he died, less than one-half of what Kilbourn received for each day of his imprisonment. We think that Van Bokkelen's demands in view of his sufferings and losses were reasonable. This, however, is a matter entirely in the discretion of the Arbitrator.

But there is another aspect of this case which should not escape attention. It is noticed by all writers who treat of reclamations made by one nation against another for injuries done to individual citizens. In such cases the injured citizen is not to be regarded simply as a private person, but as a member of the body politic, and an injury to him is an injury to the nation to which he belongs. And it is for the national as well as the private wrong that the Government of the United States claims redress.

Nor should the wider relations of this case as affecting the two countries be overlooked. This view of the subject is presented to the Arbitrator in the words of the Secretary of State of the United States which we quote from a dispatch addressed by him to Mr. Langston before Van Bokkelen's release ("Foreign Relations," 1885, pp. 509, 510):

> The grievance to Mr. Van Bokkelen is serious. He has been confined, though in failing health, for quite a year in a prison, and by this proceeding not only are his means of supporting himself and paying his creditors for the time destroyed, but his business, should he survive, has received a serious if not fatal shock. But the injury to the commercial interests both of Hayti and of the United States is vastly more far reaching. No citizen of the United States will be hereafter willing to do business in Hayti if, for indebtedness to which no taint of criminality is imputed, he is to be subjected to imprisonment so long and so oppressive as to involve the destruction of his means of livelihood as well as injury to his health and misery to his family. It is not to the interest of either Hayti or the United Statss that such a condition of things should exist.

Reparation is impossible, but the award should be commensurate with the injuries inflicted and large enough not to belittle the principles involved.

Respectfully submitted,

CRAMMOND KENNEDY,
MARSTON NILES,
Counsel.

WASHINGTON, D. C., *August 8, 1888.*

Annex 16

***Rafii v. The Islamic Republic of Iran and The Iran Ministry of Information and Security*, U.S. District Court for the District of Columbia, Findings of Facts and Conclusions of Law, 2 December 2002, Case No. 01-850**

Excerpts: p. 1 & pp. 18-32

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANCE MOKHATEB RAFII,

Plaintiff,

v.

THE ISLAMIC REPUBLIC OF IRAN

and

THE IRAN MINISTRY OF INFORMATION AND SECURITY

Defendants.

Civil Action No. 01-850 (CKK)

ORDER

Pursuant to the accompanying Findings of Fact and Conclusions of Law, it is this 2 day of December, 2002,

ORDERED, that the Court finds *in favor of* the Plaintiff, France Mokhateb Rafii, and *against* the Defendants, The Islamic Republic of Iran and The Iran Ministry of Information and Security; it is further

ORDERED, that the Clerk of this Court forthwith enter judgment against The Islamic Republic of Iran and The Iran Ministry of Information and Security in the following amount:

Compensatory Damages:

Solatium France Rafii **$5,000,000.00**; and it is further

(N)

21

156 (Clawson). Dr. Clawson testified that based on what he has read and researched "[t]here's no doubt whatsoever" that MOIS and the Iranian government were responsible for the assassination of Dr. Bakhtiar. Tr. at 150 (Clawson).

III. CONCLUSIONS OF LAW

The Foreign Sovereign Immunities Act, 28 U.S.C. §1602 *et seq.* ("FSIA") provides that federal courts lack subject matter jurisdiction to entertain claims against foreign states unless those claims fall into one of the exceptions provided in the Act. Section 1605(a)(7) provides:

> A foreign state shall not be immune from jurisdiction of the courts of the United States or of the States in any case . . . in which money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . extrajudicial killing . . ., or the provision of material support or resources . . . for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency . . . .

28 U.S.C. § 1605(a)(7). In addition, the foreign state defendant must be "designated as a state sponsor of terrorism" and either "the claimant [or] the victim [must be] a national of the United States . . . when the act upon which the claim is based occurred." *Id.* §§ 1605(a)(7)(A)-(B). A note to Section 1605(a)(7), commonly referred to as the Flatow Amendment, *see Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 12 (D.D.C. 1998), provides a cause of action over

> [a]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism . . . while acting within the scope of his or her office, employment, or agency . . . for money damages which may include economic damages, solatium, pain and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

28 U.S.C. § 1605 note; *see also Flatow*, 999 F. Supp. at 12-13 (examining the Flatow Amendment and determining that it "should be considered to relate back to the enactment of 28 U.S.C. § 1605(a)(7) as if they had been enacted as one provision, and the two provisions should

be construed together and in reference to one another"). The Flatow Amendment prohibits such actions, however, "if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States." 28 U.S.C. § 1605 note.[10]

Taking all of these statutory requirements into account, Plaintiff, in order to "establish subject matter jurisdiction and state a claim pursuant to the FSIA," must establish the following elements:

> (1) that personal injury or death resulted from an act of . . . extrajudicial killing; and
> (2) the act was either perpetrated by a foreign state directly or by a non-state actor which receives material support or resources from the foreign state defendant; and
> (3) the act or provision of material support or resources is engaged in by an agent, official, or employee of the foreign state while acting within the scope of his or her office, agency, or employment; and
> (4) that the foreign state be designated as a state sponsor of terrorism either at the time the incident complained of occurred or was later so designated as a result of such act; and
> (5) if the incident complained of occurred within the foreign state defendant's territory, plaintiff has offered the defendants a reasonable opportunity to arbitrate the matter; and
> (6) either the plaintiff or the victim was a United States national at the time of the incident; and
> (7) similar conduct by United States agents, officials, or employees within the United States would be actionable.

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[10] Congress explicitly provided that this cause of action could be applied retroactively to events occurring prior to its passage in 1996. *See* Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221(c) ("The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act [Apr. 24, 1996]."); *Flatow*, 999 F. Supp. at 13 ("Although the application of statutes to pre-enactment conduct is traditionally disfavored, where Congress has expressly prescribed the statute's proper reach, there is no need to resort to judicial default rules.") (citations and internal quotation marks omitted). However, the FSIA permits actions to be brought pursuant to Section 1605(a)(7) only when "commenced not later than 10 years after the date on which the cause of action arose." 28 U.S.C. § 1605(f). But "[a]ll principles of equitable tolling, including the period during which the foreign state was immune from suit . . . apply in calculating this limitation period." *Id.* Since Dr. Bakhtiar was killed on August 6, 1991, and Plaintiff filed her suit on April 18, 2001, the Court finds this suit is not barred by the FSIA's statute of limitations.

Elahi, 124 F. Supp. at 106-07. In making out her case, Plaintiff must establish her "claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). Although the "satisfactory" standard has been subject to various interpretations, *see Ungar v. Islamic Republic of Iran*, 211 F. Supp. 2d 91, 98 (D.D.C. 2002) (discussing the various standards applied in Section 1605(a)(7) cases), the Court accepts the *Ungar* determination "that the correct standard . . . is the standard for granting judgment as a matter of law under [Federal Rule of Civil Procedure] 50(a) – a legally sufficient evidentiary basis for a reasonable jury to find for plaintiff." *Id.*

1. Extrajudicial Killing

Dr. Bakhtiar's murder was an extrajudicial killing. The FSIA states that the term "extrajudicial killing" shall "have the meaning given [that term] in section 3 of the Torture Victim Protection Act of 1991." 28 U.S.C. 1605(e)(1). That Act defines extrajudicial killing as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation." 28 U.S.C. § 1350 note.

Dr. Bakhtiar's murder was a deliberate act. The evidence clearly shows that his death was meticulously planned and this plan was intentionally executed. Second, Dr. Bakhtiar's murder was not authorized by "the judicial process contemplated by the statute." *Elahi*, 124 F. Supp. 2d at 107. Lastly, it is clear that "[a] state violates international law if, as a matter of state policy, it practices, encourages, or condones . . . the murder or causing the disappearance of individuals." Restatement (Third) of Foreign Relations Law of the United States § 702(c)

(2002); *see also Elahi*, 124 F. Supp. 2d at 107 (listing cases finding "assassination is 'clearly contrary to the precepts of humanity as recognized in both national and international law'"). Therefore, Dr. Bakhtiar's killing cannot be said to have been "lawfully carried out under the authority of a foreign nation."

2. Foreign State Actor

The uncontroverted evidence in this case satisfies the Court that the assassination of Dr. Bakhtiar was done in furtherance of the policies of the Islamic Republic of Iran, initiated–at the very least– by a high-level Iranian official, facilitated by various organs of the Iranian government, and perpetrated by Iranian agents. The Court is also satisfied that Defendant MOIS was engaged in the assassination plot and its execution.[11] As the *Elahi* court noted in its decision regarding the assassination of Flag of Freedom leader Dr. Elahi, judges have found Iran liable in cases "where its involvement . . . in terrorist acts was much less direct and involved only the provision of support and resources to terrorist groups." *Elahi*, 124 F. Supp. 2d at 108. In both this case and that of *Elahi*, the victims were specifically targeted for death by officials and agents of the Iranian government because of their views and the threat they were perceived to pose to the Iranian regime.[12]

3. State Sponsor of Terrorism

The FSIA requires that for a court to have jurisdiction to hear a case under Section

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[11] The FSIA defines "foreign state" as including "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." 28 U.S.C. §§ 1602(a), (b). Therefore, MOIS is also liable under the FSIA. *See Elahi*, 124 F. Supp. 2d at 108 n.11.

[12] The Court's finding on this element of the FSIA analysis also satisfies the third prong of the analysis, as it is clear the perpetrators were acting within the "scope of [their] office, agency or employment" with Iran.

1605(a)(7) the foreign state must have been "designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred . . . ." 28 U.S.C. § 1505(a)(7)(A). Both provisions require the Secretary of State to publish a list of countries that support terrorism. *See* 50 App. U.S.C. 2405(j); 22 U.S.C. 2371(a)-(b). The Court determines that Iran was designated as a state sponsor of terrorism in 1991, the year Dr. Bakhtiar was killed, as defined by the FSIA. *See* Exhibit 3 at 30 (United States Department of State, Patterns of Global Terrorism: 1991 (1992)); Exhibit 4 at 22 (United States Department of State, Patterns of Global Terrorism: 1992 (1993)).

4. United States National

The FSIA requires either the claimant or the victim to be "a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred." 28 U.S.C. § 1605(a)(7)(B)(ii). "The term 'national of the United States'" includes "citizen of the United States." 8 U.S.C. § 1101(a)(22). Plaintiff has established that she was a United States national at the time of her father's death. Exhibit 54 (France Mokhateb Rafii Certificate of Naturalization, Feb. 21, 1999); Tr. at 209 (France Rafii). Therefore, Plaintiff was eligible to bring this claim under the FSIA.[13]

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[13] As the murder of Dr. Bakhtiar took place in France and not Iran, the fifth element of the FSIA analysis is not applicable to the present case. *See* 28 U.S.C. § 1605(a)(7)(B)(i). As for the seventh element of the analysis, that similar conduct by United States agents, officials or employees within the United States would be actionable, "[t]here can be no serious dispute that if officials or agents of the United States, while acting in their official capacities, arranged for and directed the assassination of a critic of the United States government, they would not be immune from civil suits . . . ." *Elahi*, 124 F. Supp. 2d at 108 n.14 (citing U.S. Const. amend. V; *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)).

IV. DAMAGES

The FSIA, under the Flatow amendment, explicitly provides damages for successful plaintiffs in suits brought under Section 1605(a)(7). 28 U.S.C. § 1605 note. Specifically, the Flatow amendment provides for "money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7). *Id.*

A. Count I: Loss of Solatium

1. Legal Standard for Awarding Solatium Damages

Solatium is defined as "Compensation; esp., damages allowed for hurt feelings or grief, as distinguished from damages for physical injury." Blacks Law Dictionary 1397 (7th ed. 1999). "Thus mental anguish, bereavement and grief resulting from the fact of decedent's death constitutes the preponderant element of a claim for solatium." *Flatow*, 999 F. Supp at 30; *see also id.* at 29-30 (discussing the solatium remedy in general). The Court finds Judge Lamberth's description of the solatium analysis particularly insightful and helpful.

> Spouses and relatives in direct lineal relationships are presumed to suffer damages for mental anguish. . . . Proof relies predominantly on the testimony of claimants, their close friends, and treating medical professionals, as appropriate. Obvious distress during testimony, or the claimant's inability to testify due to intense anguish is usually considered in fixing the amount for solatium. Testimony which describes a general feeling of permanent loss or change caused by decedent's absence has been considered a factor to be taken into account in awarding damages for solatium. Medical treatment for depression and related affective disorders is another strong indicator of mental anguish. The body may also react to the stress of anguish with pain or illness, particularly stomach and chest pain, and documentation of such disorders are germane to the calculation of solatium.
> Courts have also recognized that in the long term, the sudden death of a loved one may manifest itself as "a deep inner feeling of pain and anguish often borne in silence." Individuals can react very differently even under similar circumstances; while some sink into clinical depression and bitterness, others attempt to salvage something constructive

from their personal tragedy. Such constructive behavior should not be considered as mitigating solatium, but rather as an equally compensable reaction, one in which courage to face their own mental anguish prevails in order to survive, and in some circumstances, to benefit another.

A separate loss which is encompassed within solatium is the loss of decedent's society and comfort. . . . Many jurisdictions have now expanded recovery for loss of comfort and society to include all benefits which the claimant would have received had decedent lived. "Society" has evolved to include "a broad range of mutual benefits which 'each family member' receives from the other's continued existence, including love, affection, care, attention, companionship, comfort and protection."

The calculations for mental anguish and loss of society share some common considerations. First, the calculation should be based upon the anticipated duration of the injury. Claims for mental anguish belong to the claimants and should reflect anticipated persistence of mental anguish in excess of that which would have been experienced following decedent's natural death. When death results from terrorism, the fact of death and the cause of death can become inextricably intertwined, thus interfering with the prospects for anguish to diminish over time.

The nature of the relationship between the claimant and the decedent is another critical factor in the solatium analysis. If the relationship is strong and close, the likelihood that the claimant will suffer mental anguish and loss of society is substantially increased, particularly for intangibles such as companionship, love, affection, protection, and guidance. Numerous factors enter into this analysis, including: strong emotional ties between the claimant and the decedent; decedent's position in the family birth order relative to the claimant; the relative maturity or immaturity of the claimants; whether decedent habitually provided advice and solace to claimants; whether the claimant shared interests and pursuits with decedent; as well as decedent's achievements and plans for the future which would have affected claimants.

Finally, unlike lost wages, which can be calculated with a fair degree of mathematical certainty, solatium cannot be defined through models and variables. Courts have therefore refused to even attempt to factor in the present value of future mental anguish and loss of society. While economic losses can be reduced to present value with simple equations to establish the amount of an annuity established today which would have matched the decedent's ostensible income stream, the scope and uncertainty of human emotion renders such a calculation wholly inappropriate. This is the paradox of solatium; although no amount of money can alleviate the emotional impact of a child's or sibling's death, dollars are the only means available to do so.

Id. at 30-32 (citations omitted).

2. Court's Award of Solatium Damages

The testimony in this case has established that France Rafii had a close relationship with

her father. She and her father did not allow obstacles to keep them apart from each other. Growing up in Iran, she lived with her father even after her parents' divorce. After Dr. Bakhtiar was forced into hiding with the overthrow of the Shah, Ms. Rafii would risk her life to visit her father. Later, when she was settled in the United States and her father in France, she spent two months of the year with him in France and spoke with him once a week by telephone.

It is clear that despite the passage of over eleven years, Ms. Rafii still grieves for her father. Ms. Rafii, her son and her husband, all testified that she is a changed person since the death of her father. She testified she cries for her father every day. Although the details of the brutal manner in which Dr. Bakhtiar was killed and the "mutilation" performed on his body were carefully avoided by counsel, it is clear that this aspect of his death has added to the grief and horror of the Plaintiff. Furthermore, the fact that her father's death was a political assassination by the Islamic Republic of Iran means that the circumstances of his death are often carried in the press and difficult to avoid. Moreover, as Judge Lamberth noted in *Flatow*,

> [e]ven where the death results from the most extreme forms of negligence, the primary visceral reaction is to the tragedy. This is not the case with deaths resulting from terrorist attacks, in which the tragedy itself is amplified by the malice which inspired the event. The malice associated with terrorist attacks transcends even that of premeditated murder. The intended audience of a terrorist attack is not limited to the families of those killed and wounded . . . . The terrorist's intent is to strike fear not only for one's own safety, but also for that of friends and family, and to manipulate that fear in order to achieve political objectives. Thus the character of the wrongful act itself increases the magnitude of the injury. It thus demands a corresponding increase in compensation for increased injury.

Id. at 30. The Court finds that this observation, made in the terrorism context, is equally relevant and applicable to the political assassination perpetrated in this case.

In fashioning Plaintiff's award, the Court is faced with the "paradox of solatium," and looks for guidance to the solatium awards of other courts in similar cases. In *Flatow*, the court

awarded each parent $5,000,000, and each sister and brother $2,500,000, in solatium for the death of Alisa Flatow which occurred in a terrorist attack. *Id.* at 32. In *Elahi*, the case with facts closest to the present matter, the court awarded $5,000,000 to each brother of the assassinated Flag of Freedom leader Dr. Elahi. *Elahi* 124 F. Supp. 2d at 112. In *Eisenfeld*, the court awarded $5,000,000 each to the parents, and $2,500,000 to each sister of the two terrorist attack victims. *Eisenfeld*, 172 F. Supp. 2d at 9.

After considering the uncontroverted evidence of Defendants' actions and Plaintiff's subsequent grief, the Court awards Plaintiff France Rafii $5 million in solatium.

B. Count II: Punitive Damages

1. Legal Standard for Awarding Punitive Damages

As noted above, punitive damage awards are available in actions brought pursuant to the Flatow Amendment. 28 U.S.C. § 1605(a)(7); 28 U.S.C. § 1605 note. Although punitive damages are available against a foreign state's agency or instrumentality, punitive damages are not available against a foreign state directly. 28 U.S.C. § 1606;[14] *see also* Plaintiff's Pretrial Proposed Findings of Fact and Conclusions of Law ("Pl. Prop.") at 40. Plaintiff argues that Section 1606 "does not mean that punitive damages may not be awarded vicariously against a state sponsor of terrorism based upon the theory of *respondeat superior*. Pl. Prop. at 40. Plaintiff's argument mirrors the reasoning of Judge Lamberth in *Flatow*:

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[14] Section 1606 provides: "As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages . . . ." 28 U.S.C. § 1606.

> The FSIA is not intended to affect the substantive law of liability or the attribution of liability between co-defendants. Even if 28 U.S.C. § 1606 applies to causes of action brought directly against a foreign state pursuant to the state sponsored terrorism exception to immunity and the Flatow amendment, a foreign state sponsor of terrorism can still be indirectly liable for punitive damages under the principles of *respondeat superior* and vicarious liability.

Flatow, 999 F. Supp. at 25-26; *see also id.* at 27 (concluding "that a foreign state sponsor of terrorism is jointly and severally liable for all damages assessed against co-defendant officials, agents, and employees) (internal citations omitted).

The Court does not agree with the Plaintiff's conclusion. First, the Court notes that the clearest indication of Congressional intent that the FSIA was "not intended to affect the substantive law of liability" is Section 1606, which states: "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606; *see also First Nat'l City Bank v. Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983) ("The House Report on the FSIA states: 'The bill is not intended to affect the substantive law of liability. Nor is it intended to affect . . . the attribution of responsibility between or among entities of a foreign state; for example, whether the proper entity of a foreign state has been sued, or whether an entity sued is liable in whole or in part for the claimed wrong."). However, the language of Section 1606 qualifies this intention by stating immediately thereafter "*but* a foreign state . . . shall not be liable for punitive damages." 28 U.S.C. § 1606 (emphasis added). Furthermore, the language of Section 1606 was amended in October 2000. *See* Pub. L. No. 106-386, § 2002(f)(2) (2000). The amendment repealed language added in 1998 (after the *Flatow* decision) which excepted from the prohibition on the award of punitive damages against a foreign state actions brought pursuant to 28 U.S.C. § 1605(a)(7). The most

recently amended version of Section 1606 holds plainly that "a foreign state . . . shall not be liable for punitive damages." 28 U.S.C. § 1606. Given the clear language of the amended provision, and the intent of Congress evident in the language the amendment repealed in 2000, this Court determines that it lacks the authority to award punitive damages directly or indirectly against the Islamic Republic of Iran. The Court also notes that Judge Lamberth has recently reached the same conclusion. *See Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13, 28 n.1 (2002) ("The plaintiffs also seek punitive damages against the Islamic Republic of Iran itself. As the Court noted in *Elahi*, however, punitive damages may not be awarded against the Islamic Republic of Iran because 'Congress recently repealed legislation that would have permitted punitive damages against a foreign state in cases, such as this one, brought under 28 U.S.C. § 1605(a)(7).' . . . The Court's decision in *Eisenfeld* predated this statutory change. Thus, while the Court did award such damages in *Eisenfeld*, it cannot do so in the instant case."); *see also Elahi*, 124 F. Supp. 2d at 114 n.17; *Surette v. Islamic Republic of Iran*, 2002 U.S. Dist. LEXIS 21188, *17 n.6 (D.D.C. Nov. 1, 2002); *Stethem v. Islamic Republic of Iran*, 201 F. Supp. 2d 78, 92 (D.D.C. 2002) ("Punitive damages may not be assessed against the Islamic Republic of Iran . . . ."); *Wagner*, 172 F. Supp. 2d at 134 n.9 (D.D.C. 2001) ("Punitive damages may not be assessed against the Islamic Republic of Iran . . . ."); *Polhill v. Islamic Republic of Iran*, 2001 U.S. Dist. LEXIS 15322, *17 n.5 (D.D.C. Aug. 23, 2001) (stating "the FSIA exempts a foreign state from liability for punitive damages"); *but see Mousa v. Islamic Republic of Iran*, 2001 U.S. Dist. LEXIS 24316, *35 (D.D.C. Sept. 19, 2001) (awarding plaintiff punitive damages against both Iran and MOIS).

"Punitive damages are damages . . . awarded against a person to punish him for his

outrageous conduct and to deter him and others like him from similar conduct in the future. . . . Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant." Restatement (Second) of Torts § 908 (1979). By making the victim "more than whole," punitive damages strive to spare others "a similar injury." *Anderson*, 90 F. Supp. 2d at 114. In *Alejandre v. Cuba*, 996 F. Supp. 1239 (S.D. Fla. 1997), the court described the particular suitability of punitive damages in FSIA cases or under the Alien Tort Claims Act. Quoting *Filartiga v. Pena-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984), the court noted:

> [P]unitive damages are designed not merely to teach a defendant not to repeat his conduct but to deter others from following his example. To accomplish that purpose the court must make clear the depth of international revulsion against torture and measure the award in accordance with the enormity of the offense.

Alejandre, 996 F. Supp. at 1251. Punitive damages have been awarded often in cases brought under the FSIA. A multiple of the amount of defendant's terrorism expenditures was used to assess punitive damages in the *Anderson* case against the MOIS, awarding "thrice the MOIS' maximum annual budget for terrorist activities, or $300 million." *Anderson*, 99 F. Supp. 2d at 114. The *Elahi* court also awarded $300 million in punitive damages against the MOIS. *Elahi*, 124 F. Supp 2d at 114; *see also Sutherland*, 151 F. Supp 2d at 53 (awarding $300 million in punitive damages against MOIS); *Wagner*, 172 F. Supp 2d at 138 (awarding $300 million in punitive damages against MOIS).

2. The Court's Award of Punitive Damages

Dr. Clawson testified that Iran spends between $50 million and $200 million a year just on its efforts to assassinate dissidents outside of Iran. Tr. at 165 (Clawson). He also testified that Iran's oil and natural gas reserves are conservatively valued at more than a trillion dollars. *Id.* at 164. Evidence was also presented that recent punitive damage awards in FSIA actions have attracted Iran's attention. *Id.* at 151. According to Dr. Clawson, these awards have been "frequently cited as evidence[] of the strong pressure that the United States was placing on Iran as a result of Iran's support for the international terrorism. And this has encouraged a vigorous debate inside Iran about what would be the appropriate Iranian policy towards the United States" and "whether Iran should support terrorism." *Id.* at 151, 153-54. Dr. Clawson believes that a punitive damage award "would serve the purposes for which the law has been enacted." *Id.* at 165.

Iran's systematic campaign to assassinate Iranian dissidents no matter where they are located "violates fundamental precepts of international law that are binding on all members of the world community." *Elahi*, 124 F. Supp. 2d at 114. It is clear that the goal and effect of the Iranian government's policy of assassination has been to quiet opposition.

> [The assassinations have] made many dissidents very fearful. It's discouraged people from becoming involved in dissident organizations. And it's also made people in dissident organizations suspicious of others in those groups wondering whether they might be agents of the Iranian government. . . . It inhibits those who would write for these organizations, and it very much inhibits people who would speak at their public activities.

Tr. at 149 (Clawson). Other courts have found Iranian efforts to stifle dissent and open expression appropriate grounds for the imposition of punitive damages. *See Anderson*, 90 F. Supp. 2d at 114 ("Yet another reason to award punitive damages in this particular case is to

vindicate the interest of society-at-large in the collection and dissemination of complete and accurate information about world conflicts."). Furthermore, in this case, the MOIS assassinated an individual whom the Court finds was an inspiration to those in the Iranian dissident community as well as to advocates of human rights around the world. Dr. Clawson testified that "Dr. Bakhtiar was by far the best known person in Iran of all those dissidents who have been killed, and he was also the person who was best known and most respected in the European country where he was killed." Tr. at 149-50 (Clawson). Dr. Ladan Boroumand testified as to the significance of Dr. Bakhtiar's life and death:

> Dr. Bakhtiar was a person who was involved with the fight for democracy in his country from right after the Second World War, and it is for me very important to talk about because his killing had a tremendous political meaning. The man was literally tied to a prodemocracy movement in Iran that started in the middle of 19th Century, and he never failed his ideals. He was . . . a very humble person. He never boasted. I'm discovering a lot of information about this person that I never heard while he was alive. And I think when a regime like the Islamic Republic kills people like this, not only when they kill any of the dissidents, they want to show the dissidents and the other Iranian who may dare oppose them that they are nonentities. When they come to the West they kill us and they go away with impunity. They signify to us that we are nonentities. And that is why it's so important, justice become such an important matter, not for the sake of justice, but also for the sake of democracy.
>
> Bakhtiar was a person who ideologically was faithful to human being. He really believed in the dignity of human being and, you know, all his life was dedicated to that. . . . And he really believed in the parliamentary regime and the rights of, you know, every citizen to participate in the making of its destiny. . . .
>
> It is not only to scare us out, it is also -- the regime wants to tell the Iranian people that you see this man was a pro western man. He loved western democracy. He loved western values. By the way, these are universal value and are not western values. We can kill him. Under the nose of the French police nothing happens, nothing happens to our relations. These regimes, western regimes that you love so much, are not democracies, these are just money-oriented people. They want contracts. We give them contracts and we get you guys. So keep quiet and content yourself with our tyranny.

Tr. at 64-65, 67-68 (Boroumand).

The Court concludes that an award of punitive damages in the amount of $300 million

against the MOIS in punitive damages is both appropriate and necessary due to the outrageousness of its evil conduct both in this case and in the assassination of Iranian dissidents in general.

V. CONCLUSION

Based on the foregoing reasons, the Court finds that Plaintiff has met her burden of producing evidence to the satisfaction of this Court that Defendants were responsible for the extrajudicial death of her father, Dr. Chapour Bakhtiar, and therefore liable under the Flatow Amendment to the Foreign Sovereign Immunities Act. Defendants shall be jointly liable for the Court's award of $5 million in solatium to Plaintiff. Defendant Iran Ministry of Information and Security shall be liable for $300 million to Plaintiff in punitive damages.

The Clerk of the Court shall enter judgment accordingly. An Order accompanies these Findings of Fact and Conclusions of Law.

Entered on: Dec. 2, 2002

Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

Annex 17

***Smith, et al. v. The Islamic Emirate of Afghanistan, The Taliban, Al Qaida/Islamic Army, Sheikh Usamah Bin-Muhammad Bin-Laden a/k/a Osama Bin Laden, Saddam Hussein, The Republic of Iraq,* U.S. District Court for the Southern District of New York, Opinion and Order, 7 May 2003 as amended 16 May 2003, 262 F. Supp. 2d 217 (S.D.N.Y. 2003)**

Smith v. Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217 (S.D.N.Y. 2003)

US District Court for the Southern District of New York - 262 F. Supp. 2d 217 (S.D.N.Y. 2003)
May 16, 2003

262 F. Supp. 2d 217 (2003)
Raymond Anthony SMITH, as Administrator of the Estate of George Eric Smith, deceased; and Katherine Soulas, in her own right, on behalf of her minor children, and as Executrix of the Estate of Timothy Soulas, deceased, Plaintiffs,

The ISLAMIC EMIRATE OF AFGHANISTAN, The Taliban, Al Qaida/Islamic Army, Shiekh Usamah Bin-Muhammad Bin-Laden a/k/a Osama Bin Laden, Saddam Hussein, The Republic of Iraq, Defendants.
No. 01 CIV. 10132(HB).
United States District Court, S.D. New York.

May 7, 2003.
As Amended May 16, 2003.

OPINION AND ORDER
BAER, District Judge.

I. BACKGROUND
On November 14, 2001, Raymond Anthony Smith, the administrator of the estate of his brother George Eric Smith, brought suit against the Islamic Emirate of Afghanistan, the Taliban, al Qaeda, and Sheikh Usamah Bin Muhammad Bin Laden also known as Osama bin Laden, seeking damages for George Smith's death in the events of Sept. 11, 2001. On November 15, 2001, Jane Doe, executrix of the estate of Timothy Soulas, brought a separate suit against these same defendants. Plaintiffs effected service on the Taliban and the Islamic Emirate of Afghanistan through personal service on Ambassador Abdul Salaam Zaeef and on the other defendants through service by publication in Afghani and Pakistani newspapers and several television stations. I concluded that this service met minimal due process requirements. By order of January 23, 2003, the Court consolidated the two cases, designating *Smith v. Islamic Emirate of Afghanistan,* 01 Civ. 10132, as the lead case.

2. Substantive laws relied on by plaintiffs against Iraq and Saddam Hussein
Plaintiffs bring their claims against Iraq and Saddam Hussein based on two statutes, the Antiterrorism Act of 1991 (18 U.S.C. § 2333) and the Foreign Sovereign Immunities Act (28 U.S.C. § 1605(a) (7)).

a) Antiterrorism Act, 18 U.S.C. § 2333
As discussed *supra,* 18 U.S.C. § 2333 creates a cause of action for the "estate, survivors, or heirs" of any U.S. national killed by an act of international terrorism. However, 18 U.S.C. § 2337 appears to expressly foreclose an action against Iraq and its leader. This provision of the ATA states: "No action shall be maintained under section 2333 of this title against ... *a foreign state,* an agency of a foreign state, *or an officer* or employee *of a foreign state* or an agency thereof *acting within his or her official capacity* or under color of legal authority." *Id.* § 2337 (emphasis added). Plaintiffs contend that this provision does not apply here because 28 U.S.C. § 1605(a) (7) has stripped Iraq and Saddam Hussein of the protection of § 2337. *See* Pl Proposed Findings of Fact and Conclusions of Law II69, at 31. I disagree.

Plaintiffs misses the point. The issue is *not* whether 2337 bars suit against Iraq and Saddam Hussein under FSIA § 1605(a) (7)it certainly does notbut whether plaintiffs have a cause of action under § 2333, which permits treble damages for civil violations of the ATA. Section 2337 could not be clearer it prevents suits under § 2333 against foreign states and officers wherein a plaintiff who prevails would be entitled to treble damages. See *Cronin,* 238 F. Supp. 2d at 231 n. 2 ("The problem with invoking [18 U.S.C. § 2333(a) against a foreign state] is 18 U.S.C. § 2337 explicitly provides that `no action shall be maintained under section 2333 of this title against ... a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.'"). Thus, plaintiffs cannot rely on § 2333 against Iraq or Saddam Hussein.

b) FSIA, 28 U.S.C. § 1605(a) (7)
Section § 1605 of FSIA performs two functions: First, § 1605(a) (7) withdraws sovereign immunity and grants federal courts *in personam* jurisdiction over a foreign state in certain enumerated circumstances. *See Cronin v. Islamic Republic of Iran,* 238 F. Supp. 2d 222, 230 (D.D.C.2002). Second, a law commonly referred to as the "Flatow Amendment" provides a cause of action to victims of state-sponsored terrorism. *See Cronin,* 238 F. Supp. 2d at 230. To create a cause of action for victims of state-sponsored terrorist acts, Congress passed an amendment to section 1605(a) (7) entitled "Civil Liability for Acts of State Sponsored Terrorism." Pub.L. No. 104-208, § 589, 110 Stat. 3009 (1996) (codified at 28 U.S.C. § 1605(a) (7) note). This provision, commonly referred to as the `Flatow Amendment,' ... provides that `[a]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... while acting within the scope of his or her office, employment, or agency shall be liable to a United States

national ... for personal injury or death caused by acts of that official, employee, or agent for which the court of the United States may maintain jurisdiction under section 1605(a) (7)[.]'

See Cronin, 238 F. Supp. 2d at 230. A cause of action under the Flatow Amendment requires proof of the following elements: 1) that personal injury or death resulted from an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking; 2) the act was either perpetrated by the foreign state directly or by a nonstate actor which receives material support or resources from the foreign state defendant; 3) the act or the provision of material support or resources is engaged in by an agent, official or employee of the foreign state while acting within the scope of his or her office, agency or employment; 4) the foreign state must be designated as a state sponsor of terrorism either at the time the incident complained of occurred or was later so designated as a result of such act; and 5) either the plaintiff or the victim was a United States national at the time of the incident. *See* 28 U.S.C. § 1605 note. In addition to these five elements, Congress placed an important limitation on this cause of action: "No action shall be maintained under this action if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States." *Id.* Presumably, plaintiffs must also show a proximate cause between the support and resources provided, and that the defendant knew and intended to further the criminal acts. *See Boim v. Quranic Literacy Institute,* 291 F.3d 1000, 1011-12, 1015, 1023 (7th Cir.2002)

Before turning to the plaintiffs' proof on each of these elements, it is necessary to point out that there is a threshold question of whether the Flatow Amendment permits a cause of action against a foreign state such as Iraq. The Flatow Amendment provides a cause of action against a foreign state's officials, employees and agents, but does not expressly provide a cause of action against the foreign state itself. *See Cronin,* 238 F. Supp. 2d at 230; *Price v. Socialist People's Libyan Arab Jamahiriya,* 294 F.3d 82, 87 (D.C.Cir. 2002). The majority view permits a cause of action against a foreign state, despite the lack of clarity in the statute. However, most if not all of these decisions have been in the context of default judgments which lack "the benefit of the adversarial process to put any pressure on these interpretations." *See Roeder v. Islamic Republic of Iran,* 195 F. Supp. 2d 140, 171-73 (D.D.C.2002) (holding that there was no cause of action against Iran under 1605(a) (7));*cf. Price,* 294 F.3d at 87 (deferring decision because there was no briefing or argument). Further, it was enacted as a rider, with little legislative history, to an appropriations bill. *See Roeder,* 195 F. Supp. 2d at 173-74. However, enactments subsequent to the Flatow Amendment, in particular the Victims of Trafficking and Violence Protection Act of 2000, imply that it does reach foreign states. *See, e.g., Cronin,* 238 F. Supp. 2d at 231; *see also Roeder,* 195 F. Supp. 2d at 172. While not free from doubt, the better view in my opinion is that the Flatow Amendment likely provides a cause of action against a foreign state.

Several of these elements of a cause of action under the Flatow Amendment require little discussion. There can be no doubt that Mr. Soulas' and Mr. Smith's deaths resulted from aircraft sabotage, and, seemingly, hostage taking and extrajudicial killing as well (first element); that both victims were U.S. nationals at the time of the incident (fifth element), *see* Tr. 186; and that since 1990 the United States has designated Iraq as a statesponsor of terrorism (fourth element). *See* E.O. 12722, 55 F.R. No. 150, 31803 (Aug. 3, 1990). Plaintiffs cite *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* , 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971)), for the proposition that a U.S. agent, official, or employee would be liable if he or she perpetrated similar conduct. The fact that *Bivens* permits a cause of action against a federal agent, however, is only part of the equation. The Supreme Court has held that a claim against a U.S. president for the conduct identical to that alleged against Saddam Hussein would be barred because of the president's absolute immunity from damages for conduct associated with the exercise of his official duties. *See Nixon v. Fitzgerald,* , 749, 102 S. Ct. 2690, 73 L. Ed. 2d 349 (1982); *ef. Price,* 294 F.3d at 88-89 ("Executive branch officials feared that the proposed amendment to FSIA might cause other nations to respond in kind, thus potentially subjecting the American government to suits in foreign countries for actions taken in the United States."). Thus, because the Flatow Amendment expressly bars an action "if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States," the plaintiffs cannot satisfy this element as against Saddam Hussein and so the claim against him must be dismissed.

The other two elements1) that the act was either perpetrated by the foreign state directly or by a non-state actor which receives material support or resources from the foreign state defendant and 2) the act or the provision of material support or resources is engaged in by an agent, official or employee of the foreign state while acting within the scope of his or her office, agency or employmentrequire closer consideration. Plaintiffs' theory is that Iraqi agents provided material support to bin Laden and al Qaeda in the form of training, providing safehouses, and document forgery.

(1) The Proof

The analysis of these two troubling elements and their resolution will dictate the validity of the cause of action under the Flatow Amendment.

Two expert witnesses testified at the inquest on the issue of Iraq's complicity with al Qaeda: Robert James Woolsey, Jr., the Director of Central Intelligence from February 1993 to January 1995; and Dr. Laurie Mylroie, an expert on Iraq and its involvement in terrorism generally and the bombing of the World Trade Center in 1993 in particular. Dr. Mylroie described Iraq's covert involvement in acts of terrorism against the United States in the past, including the bombing of the World Trade Center in 1993. Dr. Mylroie testified to at least four events that served as the basis for her conclusion that Iraq played a role in the September 11 tragedy: First, she claimed that Iraq provided and continues to provide support to two of the main perpetrators of the bombing of the

World Trade Center in 1993. Specifically, Abdul Rahman Yasin returned to Baghdad after the bombing and Iraq has provided him safe haven ever since. See Tr. 175-76. Also, Ramsey Yusef arrived in the United States on an Iraqi passport in his own name but left on false documentationa passport of a Pakistani who was living in Kuwait and whom the Kuwaiti government kept a file on at the time that Iraq invaded Kuwait. See Tr. 174. Second, she noted bin Laden's *fatwah* against the United States, which was motivated by the presence of U.S. forces in Saudi Arabia to fight the Gulf War against Iraq. See Tr. 177. Third, she noted that threats by bin Laden in late 1997 and early 1998 which led up to the bombing of the U.S. embassies (on August 7, 1998) were "in lockstep" with Hussein's threats about ousting the U.N. weapons inspectors, which he eventually did on August 5, 1998. See Tr. 178-79. Dr. Mylroie concluded that "Iraq, I believe, did provide support and resources for the September 11 attacks. I agree with Captain Khodada when he said that... it took a state like Iraq to carry out an attack as really sophisticated, massive and deadly as what happened on September 11." See Tr. 182. She further testified, "I think that in many respects, al Qaeda acts as a front for Iraqi intelligence. Al Qaeda provides the ideology, the foot soldiers and the cover . .. [a]nd Iraq provides the direction, the training and the expertise." See Tr. 182-83.

Director Woolsey reviewed several facts that tended in his view to show Iraq's involvement in acts of terrorism against the United States in general and likely in the events of September 11 specifically. First, Director Woolsey described the existence of a highly secure military facility in Iraq where non-Iraqi fundamentalists (Egyptians and Saudis) are trained in airplane hijacking and other forms of terrorism. Through satellite imagery and the testimony of three Iraqi defectors, plaintiffs demonstrated the existence of this facility, called Salman Pak, which has an airplane but no runway. The defectors also stated that these fundamentalists were taught methods of hijacking using utensils or short knives. Plaintiffs contend it is farfetched to believe that Iraqi agents trained fundamentalists in a topsecret facility for any purpose other than to promote terrorism.

Second, Director Woolsey mentioned a meeting that allegedly occurred in Prague in April 2001 between Mohammad Atta, the apparent leader of the hijackings, and a high-level Iraqi intelligence agent. According to James Woolsey, the evidence indicates that this was an "operational meeting" because Atta flew to the Czech Republic and then returned to the United States shortly afterwards. The Minister of Interior of the Czech Republic, Stanislav Gross, stated on October 26, 2001:

> In this moment we can confirm, that during the next stay of Muhammad Atta in the Czech republic there was the contact with the official of the Iraqi Intelligence, Mr. Al Ani, Ahmed Khalin Ibrahim Samir, who was on 22nd April 2001 expelled from the Czech Republic on the basis of activities which were not compatible with the diplomatic status. As for the details of their contact, these are under investigation and I would like to remind you in this moment that neither I nor anyone else from the Police of the Czech Republic or intelligence services of the Czech Republic will not give you any more detailed information about this contact and his stay and traveling in the Czech Republic until further investigation of the facts, which we need to investigate.

See Letter from Hynek Kmonieek, Ambassador of the Czech Republic to the United Nations, to James E. Beasley, Counsel for Plaintiffs 1-2 (Feb. 24, 2003). This purported event, if true, certainly suggests a link between Iraq and al Qaeda and the events of September 11. However, as Director Woolsey noted, there remains some dispute about whether this meeting actually occurred.

Third, Director Woolsey noted that his conclusion was also based on "contacts," which refer to interactions between Hussein/Iraq and bin Laden/al Qaeda that are described in a letter from George Tenet, the Director of Central Intelligence, to Senator Bob Graham on October 7, 2002. Director Tenet's carefully worded letter included in substance the same allegations, but with less detail, that Secretary of State Colin Powell made before the U.N. Security Counsel on Feb. 5, 2003, in his remarks about "the potentially much more sinister nexus between Iraq and the al-Qaida terrorist network." Both Director Tenet and Secretary Powell mentioned "senior level contacts" between Iraq and al Qaeda going back to the early 1990s (although both acknowledged that part of the interactions in the early to mid 1990s pertained to achieving a mutual non-aggression understanding); both mentioned that al Qaeda sought to acquire poison gas and training in its use from Iraq; both mentioned that al Qaeda members have been in Iraq, including Baghdad, after September 2001. It is important to note that both Director Tenet's letter and Secretary Powell's remarks contain multiple layers of hearsay.

Finally, plaintiffs also place considerable weight on an article that appeared in a regional Iraqi newspaper in July 2001, two months before the disaster of September 11. This article, a paean to bin Laden, mentions that bin Laden 1) "will try to bomb the Pentagon after he destroys the White House," 2) "is insisting very convincingly that he will strike America on the arm that is already hurting," and 3) "will curse the memory of Frank Sinatra every time he hears his songs." *See* Exs. 16-18, Naeem Abd Muhalhal, America, An Obsession Called Osama Bin Ladin, Al-Nasiriya, July 21, 2001 (original, translation, and certificate of accuracy of translation). Because, according to Director Woolsey, "all publications in Iraq really appear at the sufferance of and with a full vetting by the Iraqi regime," *see* Tr. 158, and because of the coincidences and the fact that "[t]here is a certain propensity, I think, on bin Laden's part and on Saddam's part ... to try to communicate in somewhat vague terms," Director Woolsey concluded that there is a probability of a vague foreknowledge of what was contemplated. *See* Tr. 159.

Based on these facts, he offered the following opinion:

> I would say that based on all the material about Salman Pak; based on the statement of Director Tenet's about the contacts, terrorism and so forth going back into the past; based on what I still believe is quite likely to have been this meeting in 2001 between Al-Ani and Mohammed Atta; and based on even to some extent this article, ... I believe it is definitely more likely than not that some degree of common effort in the sense of aiding and abetting or conspiracy was involved here between Iraq and al Qaeda.

See Tr. 160.

I conclude that plaintiffs have shown, albeit barely, "by evidence satisfactory to the court" that Iraq provided material support to bin Laden and al Qaeda. As noted above, a very substantial portion of plaintiffs evidence is classically hearsay (and often multiple hearsay), and without meeting any exceptions is inadmissible for substantive purposes. Thus, the hearsay rule prevents the Court from considering as substantive evidence: the Ambassador of the Czech Republic's letter which repeats Minister Gross's statement about a meeting between Atta and al Ani in Prague, the contacts described in CIA Director Tenet's letter to Sen. Graham, the evidence that Secretary Powell recited in his remarks before the U.N., and the defectors' descriptions about the use of Salman Pak as a camp to train Islamic fundamentalists in terrorist. However, the opinion testimony of the plaintiffs' experts is sufficient to meet plaintiffs' burden that Iraq collaborated in or supported bin Laden/al Qaeda's terrorist acts of September 11. Although these experts provided few actual facts of any material support that Iraq actually provided, their opinions, coupled with their qualifications as experts on this issue, provide a sufficient basis for a reasonable jury to draw inferences which could lead to the conclusion that Iraq provided material support to al Qaeda and that it did so with knowledge and intent to further al Qaeda's criminal acts. In particular, Dr. Mylroie testified about Iraq's covert involvement in the World Trade Center bombing in 1993 and about the proximity of the dates of bin Laden's attack on the U.S. embassies and Hussein's ouster of U.N. weapons inspectors. Juries are invited to draw inferences from facts presented and this constitutes circumstantial evidence and this is what the Court has done here. My decision reflects no more than that the facts and the available inferences meet the plaintiffs' burden of proof.

III. DAMAGES

As indicated above, as non-state actors who have failed to appear in this lawsuit, the "al Qaeda defendants" are liable to the plaintiffs for the deaths of Tim Soulas and George Eric Smith, under 18 U.S.C. § 2333, which provides for treble damages. Iraq is also liable under the Flatow Amendment for economic loss, pain and suffering, and loss of solatium.

A. George Eric Smith

Mr. Smith was 38 years old when he was killed. He was a senior business analyst for SunGard Asset Management, having risen in that company over the span of eleven years from an accounting clerk. He was single and without children. Despite a childhood fraught with adversity, Mr. Smith achieved notable success in business. He rose from an accounting clerk to a senior business analyst in a matter of ten years, and had a promising career ahead of him. His estate claims the following damages: $2.95 million for lost earnings, $1,580 for funeral expenses, and $10 million for pain and suffering. His family members also claim solatium damages against Iraq pursuant to the Flatow Amendment. The Court makes the following award of damages to his estate and his heirs:

1. Economic Damages

The estate is entitled to the expenses incurred for his funeral services ($1,580) and for his lost earnings ($1,113,280), for a total of $1,114,860. All defendants are jointly and severally liable for this amount. Because Mr. Smith's estate is entitled to treble damages against the al Qaeda defendants pursuant to § 2333, the al Qaeda defendants are jointly and severally liable for an additional $2,229,720.

Lost earnings consist of the salary and benefits, less personal maintenance expenses and taxes, that it is projected he would have earned over the course of his work life. Mr. Smith's income for 2001, which is used to calculate his lost earnings, came to $70,000, which is the salary he was apparently in line to receive just before his death. Accordingly, if Mr. Smith, who was 38.6 years of age at the time of his death, worked until he was 67 years old, which is the normal retirement age under the Social Security System, *see* Report of David L. Hopkins, 2/13/2003, Ex. 36, at 2, his future worklife expectancy would be 28.4 years. Thus, Mr. Smith's $70,000 annual salary for 28.4 years comes to $1,988,000. From this amount are deducted taxes, which the expert estimated would be 21 percent of income or $417,480, and personal maintenance expenses, which the expert estimated would be 23 percent of income or $457,240. Thus, Mr. Smith's expected net earnings over the course of his working life total $1,113,280. (These figures include neither inflation nor reduction of future earnings to present value, and instead assume that they will essentially cancel each other out.)

2. Pain and suffering

The effort after a tragedy of this nature to calculate pain and suffering is difficult at best. Unfortunately, there is no way to bring back Mr. Smith and no way to even come close to understanding what he or Mr. Soulas experienced during their last moments. Under our legal system, compensation can only be through the award of a sum of money. While always difficult and never exact, the devastation and horror accompanying this tragedy makes a realistic appraisal almost impossible.

There is no direct evidence of when Mr. Smith was killed and therefore what pain and suffering he endured, but plaintiff urges that it is reasonable to infer he survived the

crash of the plane into the South Tower, where he worked. Mr. Smith telephoned a SunGard vice president minutes after the first towerie., not the tower he was inwas hit to say that it was on fire, and he was told that the cause of the fire was a plane and that he should get out. His office was on the 97th floor and the second plane that struck his building did so between the 73rd and 82nd floor, thus creating the possibility that he was killed while descending at the instant that the second plane hit his building. Plaintiffs suggest a figure of $10 million for Mr. Smith's pain and suffering, but, not surprisingly, offer no guidance on how this figure is derived. Given the uncertainty of when Mr. Smith was killed and the pain and suffering, if any, he endured, an award of $1 million is appropriate. Again, since the al Qaeda defendants and Iraq are jointly and severally liable, they are all responsible for the payment of any judgment that may be entered. Because Mr. Smith's estate is entitled to treble damages against the al Qaeda defendants pursuant to § 2333, the al Qaeda defendants are jointly and severally liable for an additional $2 million for his pain and suffering.

3. Solatium damages

The Flatow Amendment provides that plaintiffs can recover damages for loss of solatium, which is defined as "[d]amages allowed for injury to the feelings," *see* Black's Law Dictionary 1391 (6th ed.1990), or "for the mental anguish, bereavement, and grief that those with a close relationship to the decedent experience as a result of the decedent's death." *See Higgins v. Islamic Revolutionary Guard,* No. 99 Cv. 00377, 2000 WL 33674311, 2000 U.S. Dist. Lexis 22173, at *21 (D.D.C. Sept. 21, 2000) (citing *Flatow v. Islamic Republic of Iran,* 999 F. Supp. 1 (D.D.C. 1998)). According to the court in *Flatow,* which provided an extensive discussion of solatium:

> Solatium ... began as a remedy for the loss of a spouse or a parent. It has since expanded to include the loss of a child, including in some states the loss of an emancipated or adult child. Where the claim is based upon the loss of a sibling, the claimant must prove a close emotional relationship with the decedent.

Flatow, 999 F. Supp. at 29-30 (citations and footnote omitted). "Spouses and relatives in direct lineal relationships are presumed to suffer damages for mental anguish. The testimony of sisters or brothers is ordinarily sufficient to sustain their claims for solatium." *Id.* at 30. The factors commonly considered in computing awards for loss of solatium include:

> (1) whether the decedent's death was sudden and unexpected; (2) whether the death was attributable to negligence or malice; (3) whether the claimants have sought medical treatment for depression and related disorders resulting from the decedent's death; (4) the nature closeness) of the relationship between the claimant and the decedent; and (5) the duration of the claimant's mental anguish in excess of that which would have been experienced following the decedent's natural death.

Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 78, 90 (D.D.C.2002).

Plaintiffs seek solatium damages for the relatives of George Smith as follows: $5 million for his father (Raymond Anthony Smith), his grandmother (Marion Thomas), and for each of his siblings (Deborah Sallad, Elaina Smith, Carl Smith) and his step-siblings (Tanya Warren, Barbara Dixon, Letricia Smith, Korry Smith, and Kevin Smith). Plaintiffs refer to a series of cases as guideposts in which spouses of victims of terrorism have been awarded between $8-12 million, parents between $2.75-5 million, children between $5-12 million, and siblings between $2.5 and 5 million. These cases are instructive to the extent that they also involve victims of terrorism and thus share several of the factors that *Stethem* enumerated, that the deaths were sudden and unexpected and attributable to malice. It should be noted that they each involve horrific circumstances that may equal or surpass the circumstances presented here. *See, e.g., Higgins,* 2000 U.S. Dist. Lexis 22173 (Marine Corps colonel held hostage for approximately 529 days brutally tortured and eventually murdered; a videotape of him hanging by his neck was broadcast around the world and seen by his relatives); *Weinstein,* 184 F. Supp. 2d at 17 (passenger on bus injured by suicide bomb remained conscious and in extreme pain for 49 days before dying of the wounds); *Surette,* 231 F. Supp. 2d at 262 (high-ranking CIA agent was held hostage for over fourteen months and eventually died due to torture and lack of medical care); *Anderson v. Islamic Republic of Iran,* 90 F. Supp. 2d 107 (D.D.C. 2000) (plaintiff was kidnapped and tortured for seven years). Farther, plaintiffs fail to include several cases where lesser amounts have been awarded for loss of solatium. See *Jenco v. Islamic Republic of Iran,* 154 F.Strpp.2d 27, 37 (D.D.C.2001) (siblings awarded $1.5 million each where torture-victim survived and was returned to live among family for ten years); *Kerr v. Islamic Republic of Iran,* 245 F. Supp. 2d 59, 64 (D.D.C.2003) ($3 million awarded to decedent's children and $1.5 million awarded to decedent's siblings). Plaintiffs also fail to show how their circumstances compare with those in the cases they do cite. *See Flatow v. Islamic Republic of Iran,* 999 F. Supp. 1, 30 (D.D.C.1998) ("As damages for mental anguish are extremely fact-dependent, claims require careful analysis on a case-by-case basis.").

As noted above, George Smith was born into and raised amid very difficult circumstances. George was the third child of five (and first boy) of Raymond Alexander Smith and Georgia Lee Jackson, who were married in 1960 and lived together in Philadelphia, Pa., until they separated in 1963. In 1964, his father moved away to Albany, N.Y., where he met Barbara Miller with whom he fathered five more children. (He also had an eleventh child, Letricia Smith, by a third woman.) George's younger

sister Elaina, who was born in 1964, was abandoned at the hospital and raised by an aunt, unaware until her teens that she had older siblings. Because their mother was infrequently around, George and his sisters Christina and Deborah were raised mainly by their maternal grandmother until her death. George's older sister Deborah describes how the three of them slept in the same bed and fell asleep at night to the sound of rats in the room. In 1973, George's mother was killed by a stray bullet and for several weeks the children took care of themselves until a neighbor eventually contacted their paternal grandmother, Marion Thomas, who took the children in to her home in Phoenixville, Pa. In either 1975 or 1976, George's father returned to Pennsylvania and moved into his mother's house in Phoenixville.

On these facts, the Court has no reservation about concluding that George's paternal grandmother Marion Thomas is entitled to loss-of-solatium damages. Although plaintiffs have not cited any precedent where a grandparent has been awarded these damages, it is clear that she was George's surrogate mother since 1973 and that they developed an extremely close bond. *Cf. Surette,* 231 F. Supp. 2d at 270 (awarding solatium to decedent's unmarried partner for over twenty years). All testimonials submitted note the closeness of this relationship, which Ms. Thomas described as follows:

> He and I were very close when he was a boy and that closeness did not diminish when he got older. He made a point to keep in touch with me no matter where he was or what he was doing. If he was out of town, he would call me on the phone. If he went on vacation, he would send me letters or postcards. If he was in the area, he would always stop in to see me.

Marion Thomas Aff. at 1-2. She also poignantly attested that she was recently diagnosed with ovarian cancer and is in hospice care and that it has been especially difficult facing her illness and end of her life without her grandson, who was clearly as important to her as she was to him. Accordingly, Ms. Thomas is entitled to recover $3 million for loss of solatium.

Although it appears that George's father was not always fully present in his son's life, the Court determines that Raymond Alexander Smith is entitled to recover for loss of solatium, but that this award should reflect the circumstances of their attenuated relationship. The elder Mr. Smith stated that during the time he lived apart from George, he paid child support to Ms. Jackson and would "try to drive down to Philadelphia once a month or so." He described how once he returned to Phoenixville, he took the children places and played basketball with George and attended his high school games. Mr. Smith also stated that "[i]n the years before his death, I would see George once a week or so." Based on these facts, the Court concludes that an award of $1 million is appropriate.

With regard to George's siblings, the Court makes the following determinations: The step-siblings, with the exception of Raymond, who moved in to Ms. Thomas's house and shared a bedroom with George for approximately four years, are not entitled to solatium damages. Similarly, George's full siblings but who did not grow up with him (Carl and Elaina), are also ineligible for such damages. The Court does not doubt the profound effect of George's death on their lives, as their testimonials credibly describe how much they admired George and looked up to him. However, the evidence does not establish a "close emotional relationship." On the other hand, the Court determines that Deborah Sallad and Raymond Anthony Smith are entitled to loss of solatium. Ms. Sallad's testimony about how "carefree" and "normal" their life seemed at the time illustrates a special bond that enabled them to survive such difficult conditions. Ms. Sallad is awarded $500,000 for loss of solatium. Raymond Anthony Smith testified at the inquest that he was eight or nine when he first met his half-brother George, but that he moved down to Phoenixville with his father and shared a bedroom with George for four or five years, until George went to college. He testified that they remained in contact even when he was away at college and they saw each other three or four times a month, usually when George came to visit his grandmother. Raymond is awarded $250,000.

B. Timothy Soulas

Timothy Soulas was the Senior Managing Director and partner at Cantor Fitzgerald Securities. He was married with 5 children, and his wife was 3-months pregnant when he was killed on September 11. The testimony and affidavits submitted paint a very convincing picture of a highly esteemed and very successful professional with a promising career. The testimony also left no doubt that he was also very devoted to and, despite the rigors of his work, very involved with his wife and children and his siblings and father. His estate seeks the following damages: $47.65 million for lost earnings, $18,603.19 for funeral expenses, and $10 million for pain and suffering. His family members also claim solatium damages. The Court makes the following award of damages for his estate and his heirs:

1. Economic damages

The estate is entitled to the expenses incurred for his funeral services ($18,603.19) and for his lost earnings ($15,120,600), for which the al Qaeda defendants and Iraq are jointly and severally liable. Because Mr. Soulas's estate is entitled to treble damages against the al Qaeda defendants pursuant to § 2333, the al Qaeda defendants are jointly and severally liable for an additional $30,278,406.38. The calculation for lost earnings is intricate and requires some discussion.

As indicated above, lost earnings consist of the salary and benefits that it is projected he would have earned over the course of his work life, less personal maintenance expenses and taxes. For the reasons explained below, I believe the proper estimate for Mr. Soulas' income for 2001 is $850,000. Accordingly, if Mr. Soulas, who was 35.1 years of age at the time of his death, worked until he was 67 years old, which is the normal retirement

age under the Social Security System, his future worklife expectancy would be 31.9 years. Thus, Mr. Soulas's $850,000 annual salary for 31.9 years comes to $27,115,000. When taxes and personal maintenance expenses are deducted, his expected net lost earnings is $14,642,100. (The expert estimated his taxes at 37 percent or $10,032,550 and personal maintenance expenses at 9 percent or $2,440,350.) In addition, Mr. Soulas received approximately $15,000 per year in fringe benefits, which if he continued to receive during his work life would amount to $478,500. (Again, these figures include neither inflation nor reduction of future earnings to present value.)

Plaintiffs introduced two items of evidence that bear on Mr. Soulas' projected earnings for 2001a document prepared by Cantor Fitzgerald entitled Cantor Selected Award Calculations and the Soulas' IRS statements for the years 1996 through 2001. The reported wages and salaries reported at line 7 of 1040 and partnerships reported at line 17 on the Soulas' tax returns for these years are as follows:

Thus, the five years prior to 2001 indicate a consistent upward trend in Mr. Soulas' income, and an estimate of $850,000 for his income in 2001 represents a 7.6 percent increase from the prior year. Plaintiffs' expert actuarial economist projected Mr. Soulas' earnings over the course of his life based on a projected earnings of $1.2 million for 2001. This figure of $1.2 million, which is a 50 percent increase in the amount he reported as income for 2000, is based on the Cantor Fitzgerald report. This report stated that his total earnings (including salary and bonus, Cantor Grant Award, eSpeed Stock tranches, and partnership ordinary income) was expected to be in 2001, and had been $1,095,569 in 1998, $831,468 in 1999, and $1,097,678 in 2000. (The expert acknowledged that portions of these amounts were not properly counted as income and reduced the figure.) The expert did not explain why he ignored the figures indicated on the Soulas's tax submissions and instead relied entirely on the Cantor Fitzgerald report, which bears no indicia of trustworthinessit is not signed nor is there any affirmation of the accuracy of the numbers and the reliability of the accounting methods.

Accordingly, Mr. Soulas's estate is awarded $15,139,203.19 for economic damages the total of the funeral expenses, lost earnings, and lost benefits.

2. Pain and suffering

As with Mr. Smith, the Court is offered a figure of $10 million for Mr. Soulas' pain and suffering, but again there is little explanation for how the plaintiffs come upon this figure. However, unlike in the case of Mr. Smith, there is direct evidence that Mr. Soulas survived the crash of the plane into the North Tower, where he was, and that he realized he was trapped and doomed. The estate therefore seeks compensation for the "intense and devastating mental pain and anguish" for knowing he was about to die and leave behind his family (wife who was three months pregnant and five children) and for the physical pain he probably endured in dyingwhether from being crushed, or burned, etc. A client of his (Troy Rohrbaugh) spoke with him on a "squawk box" immediately

after the plane hit his tower and approximately twenty minutes later when Mr. Soulas related that the exits were blocked and that they were doomed. He apparently tried to call his wife several times and although she answered, there was only static on the line. Given that there is clear evidence that Mr. Soulas survived the plane's impact, that the ensuing time must have been psychologically excruciating, and the likelihood that his death was very painful, the Court believes that $2.5 million is appropriate, for which all the defendants are jointly and severally liable. In addition, pursuant to § 2333, the al Qaeda defendants are liable to Mr. Soulas's estate for an additional $5 million for his pain and suffering.

3. Solatium damages

Mr. Soulas's family members also claim solatium damages as follows: 1) $25 million for Tim Soulas' wife Katherine, 2) $12.5 million for each of his 6 children (Timothy Jr., Andrew, Christopher, Matthew, Nicole, and Daniel), 3) and $5 million for his father (Frederick Jr.) and each of his siblings (Frederick III, Stephen, Daniel, and Michelle).

Plaintiffs introduced ample evidence at the hearing and through affidavits of the very close relationship between Tim Soulas and his four siblings and one surviving parent. He was the fifth of six children, all close in age and close as siblings, both in their youths and as adults. This closeness was revealed and tested when the family's oldest daughter Tracey died in 1988 of a brain tumor and when Tim's mother died in 1995 after a three-year bout with pancreatic cancer. Tim Soulas' father and four surviving siblings all portray a uniquely close-knit family. Each are godparents of the others' children; remain in regular contact and spend vacations and holidays together. These testimonial leave no doubt about the appropriateness of substantial awards for loss of solatium to his siblings and father. Similarly, his wife Katy testified at the inquest about her relationship with her husband and his relationship with his children. The appropriateness of substantial awards for loss of solatium to Tim Soulas's wife and children also requires little additional discussion. Her testimony and the affidavits of his siblings show that he was very devoted to and involved with his wife and children. His death was sudden and unexpected and was attributable to malice. Although only one of Mr. Soulas's relatives has sought medical treatment, all his relatives credible testify to the profound impact of his tragic death. See *Flatow,* 999 F. Supp. at 31 ("Individuals can react very differently even under similar circumstances; while some sink into clinical depression and bitterness, others attempt to salvage something constructive from their personal tragedy. Such constructive behavior should not be considered as mitigating solatium, but rather as equally compensable reaction...."). Finally, the many reminders of September 11 will certainly extend the duration of the mental anguish that Mr. Soulas's relatives experience. Tim Soulas's wife is awarded $10 million, his father and his children are each awarded $3 million, and his siblings are each awarded $2 million.

C. Punitive damages

Plaintiffs seek to recover punitive damages against all the defendants. However, there is no basis for an award of punitive damages on these facts. As plaintiffs acknowledge, although punitive damages are allowed under the Flatow Amendment, punitive damages are not available against Iraq because 28 U.S.C. § 1606 immunizes foreign states from liability for punitive damages. *See, e.g., Elahi v. The Islamic Republic of Iran,* 124 F. Supp. 2d 97, 113-114, 113 n. 17 (D.D.C. 2000). Furthermore, the Flatow Amendment does not apply to the al Qaeda defendants. The plaintiffs' claims against the al Qaeda defendants are brought under § 2333 of the ATA, which provides for treble damages and attorneys fees but does not provide for punitive damages. To the extent that § 2333's treble-damages provision already provides a penalty, this Court is foreclosed from assessing additional punitive damages against the al Qaeda defendants.

IV. CONCLUSION

In summary, the Court holds that plaintiffs have carried their burden against the defendants and damages are awarded as follows:

With respect to the estate of George Eric Smith and his heirs, all defendants are jointly and severally liable to the estate for $1,113,280 for economic losses and $1 million for pain and suffering. The al Qaeda defendants are liable for an additional amount of $4,229,560 for economic losses and pain and suffering. Iraq is liable to Mr. Smith's relatives for loss of solatium as follows: $3 million for Marion Thomas; $1 million for Raymond Anthony Smith; $500,000 for Deborah Sallad; and $250,000 for Raymond Smith.

With respect to the estate of Timothy Soulas and his heirs, all defendants are jointly and severally liable to Timothy Soulas's estate for $15,139,203.19 for economic losses and $3 million for pain and suffering. The al Qaeda defendants are liable for an additional amount of $35,278,406.38 for economic losses and pain and suffering. Iraq is liable to Mr. Soulas's relatives for loss of solatium as follows: $10 million for Tim Soulas' wife Katherine; $3 million for his father and each of his 6 children (Timothy Jr., Andrew, Christopher, Matthew, Nicole, and Daniel); and $2 million for each of his siblings (Frederick III, Stephen, Daniel, and Michelle).

The Clerk of the Court is ordered to close this case and any pending motions and remove the matter from my docket.

IT IS SO ORDERED.

NOTES

[1] Subsequently, the complaint was amended to name Mr. Soulas' wife, Katherine Soulas, as the executrix of his will. *See* Letter from James E. Beasley to Judge Harold Baer, Jr., 2 (Mar. 5, 2003).

Annex 18

***Peterson, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Memorandum Opinion (Liability), 30 May 2003, Case No. 1:01-cv-2094**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple, et al.,	
Plaintiffs,	
v.	**Civil Action No. 01-2094 (RCL)**
THE ISLAMIC REPUBLIC OF IRAN, et al.,	
Defendants.	
JOSEPH AND MARIE BOULOS, Personal Representatives of the Estate of Jeffrey Joseph Boulos, et al.,	
Plaintiffs,	
v.	**Civil Action No. 01-2684 (RCL)**
THE ISLAMIC REPUBLIC OF IRAN, et al.,	
Defendants.	

MEMORANDUM OPINION

These actions arise from the most deadly state-sponsored terrorist attack made against American citizens prior to September 11, 2001: the Marine barracks bombing in Beirut, Lebanon on October 23, 1983. In the early morning hours of that day, 241 American servicemen were murdered in their sleep by a suicide bomber. On that day, an unspeakable horror invaded the

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lives of those who survived the attack and the family members whose loved ones had been stolen from them. The memory of that horror continues to this day.

On March 17-18, 2003, this Court conducted a bench trial to determine the liability of the defendants for this inhuman act. Having reviewed the extensive evidence presented during that trial by both lay and expert witnesses, the Court has determined that the plaintiffs have established their right to obtain judicial relief against the defendants. The Court's findings of fact and conclusions of law are set forth below.

I. PROCEDURAL BACKGROUND

The plaintiffs in these two actions are family members of the 241 deceased servicemen (hereafter, "the servicemen") and the injured survivors of the attack. Plaintiffs have brought these actions in their own right, as administrators of the estates of the servicemen, and on behalf of the servicemen's heirs-at-law. All decedents and injured survivors of the attack were serving in the U.S. armed forces at the time of their injuries or death. All plaintiffs are nationals of the United States.[1]

On October 3 and December 28, 2001, plaintiffs filed separate complaints with this

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[1] In an action under the Foreign Sovereign Immunities Act ("FSIA") for claims based on personal injury or death resulting from an act of state-sponsored terrorism, either the claimant or the victim must be an American national. See 28 U.S.C. § 1605(a)(7)(B)(ii). Although during the bench trial, the Court only received testimony that identified one of the decedents, James R. Knipple, as an American national, plaintiffs' counsel has represented that each and every service member injured or killed on October 23, 1983, or a beneficiary of that service member, is a national of the United States. The Court's findings are therefore subject to proof of American nationality during the damages phase of these proceedings. This may be accomplished either though direct testimony of any competent witness, or through the submission of relevant documentation.

Court. The complaints included statutory claims for wrongful death and common-law claims for battery, assault, and intentional infliction of emotional distress, all resulting from an act of state-sponsored terrorism. Plaintiffs sought relief in the form of compensatory and punitive damages. Although defendants were served with the two complaints on May 6 and July 17, 2002, defendants failed to file any response to either complaint, and on December 18, 2002, this Court entered defaults against defendants in both cases.

However, despite the entries of default, this Court is required to make a further inquiry prior to entering any judgment against defendants. FSIA mandates that a default judgment against a foreign state be entered only after a plaintiff "establishes his claim or right to relief by evidence that is satisfactory to the Court." 28 U.S.C. § 1608(e); see also Flatow v. The Islamic Republic of Iran, 999 F. Supp. 1, 6 (D.D.C. 1998). As in Flatow, the Court will require plaintiffs to establish their right to relief by clear and convincing evidence. The "clear and convincing" standard of proof is the standard required in the District of Columbia to support a claim for punitive damages, and is sufficient to establish a prima facie case in a contested proceeding.

II. FINDINGS OF FACT

As stated above, this Court received testimony from plaintiffs on March 17 and 18, 2003, defendants having failed to enter an appearance. The Court now enters its findings of fact, based upon the sworn testimony and documentary evidence presented during the March trial, and received in accordance with the Federal Rules of Evidence. This Court finds these facts to be established by clear and convincing evidence.

A. Historical Background[2]

The Republic of Lebanon is a mountainous country of approximately 3,800,000 people bordered by Israel, Syria, and the eastern shore of the Mediterranean Sea. Although it contains some of the oldest human settlements in the world, including the Phoenician port cities of Tyre and Sidon, it did not become an independent nation until 1944.

Lebanon did not participate militarily in the 1967 and 1973 Arab-Israeli wars. However, by 1973, approximately one out of every ten person living in Lebanon was a Palestinian refugee, many of whom supported the efforts of the Palestine Liberation Organization (PLO) against Israel. Some of these refugees engaged in guerilla warfare and terrorist activity against Israel from bases established in southern Lebanon. Beginning in 1968, Israel engaged in reprisals against these Palestinian strongholds in southern Lebanon. In 1975, civil war broke out in Lebanon between its Muslim inhabitants and Palestinian refugees, who supported the PLO, and its Christian inhabitants, who opposed the PLO's actions. The war would not come to a complete end for another fifteen years, during which approximately twenty thousand Lebanese were killed, and approximately the same number of Lebanese were wounded.

B. The Arrival of the 24th Marine Amphibious Unit

In late 1982, with the concurrence of the United Nations, a multinational peacekeeping coalition consisting of American, British, French, and Italian soldiers arrived in the Lebanese capital of Beirut. In May of 1983, the 24th Marine Amphibious Unit of the U.S. Marines ("the

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[2] The Court has taken judicial notice of the facts contained in the following subsection, pursuant to Rule 201 of the Federal Rules of Civil Procedure.

24th MAU") joined this coalition.[3] The rules of engagement issued to the servicemen of the 24th MAU made clear that the servicemen possessed neither combatant nor police powers. In fact, under the rules, the servicemen were ordered not to carry weapons with live rounds in their chambers, and were not authorized to chamber the rounds in their weapons unless (1) they were directly ordered to do so by a commissioned officer or (2) they found themselves in a situation requiring the immediate use of deadly force in self-defense.[4] As pointed out during trial, the

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[3] A Marine Amphibious Unit (now "Marine Expeditionary Unit") is a combined air / ground force unit of approximately two thousand U.S. Marines. See Marine Expeditionary Units, at http://www.usmc.mil/marinelink/ind.nsf/meus.

[4] In the present context, "rules of engagement" are directions issued by a competent military authority that set out the limitations and circumstances under which the forces under its command may initiate and prosecute combat engagement with other forces that they encounter. Following are the rules of engagement that were issued to the members of the 24th MAU:

1. When on post, mobile or foot patrol, keep loaded magazine in weapon, bolt closed, weapon on safe, no round in the chamber.

2. Do not chamber a round unless told to do so by a commissioned officer unless you must act in immediate self-defense where deadly force is authorized.

3. Keep ammo for crew-served weapons readily available, but not loaded. Weapon is on safe.

4. Call local forces [LAF] to assist in self-defense effort. Notify headquarters.

5. Use only minimum degree of force to accomplish any mission.

6. Stop the use of force when it is no longer needed to accomplish the mission.

7. If you receive effective hostile fire, direct your fire at the source. If possible, use friendly snipers.

8. Respect civilian property; do not attack it unless absolutely necessary to protect friendly forces.

9. Protect innocent civilians from harm.

members of the 24th MAU were more restricted in their use of force than an ordinary U.S. citizen walking down a street in Washington, D.C.

The restrictive rules of engagement are consistent with the testimony of Col. Timothy Geraghty, the commander of the 24th MAU, about the mission of the multinational peacekeeping force:

> [E]ssentially what it was, it was primarily a peacekeeping mission and it was to show [our] presence, and when I say ours, and this is throughout all the forces, is that we were out showing a presence, [primarily] to provide stability to the area. And I might add that there's no doubt in just about anyone involved at the time, we saved a lot of lives by our presence there for awhile. And that was part of, I might add, in my judgment, the success of that, our presence mission there, and [that] it was working is the primary reason why we were targeted. . . .
>
> The rules – these were geared primarily again with the peacekeeping mission [in mind] and the sensitivities of killing or maiming someone accidentally. That could be a tinderbox. That could start a whole chain of events.

Col. Geraghty further testified that the location and security of the 24th MAU's position was not tactical in nature, and was only acceptable to the commanding officer in the context of the unit's mission to "provide a presence."

Based on the testimony of Col. Geraghty and other witnesses, the Court finds that on October 23, 1983, the members of the 24th MAU, and the service members supporting the unit,

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> 10. Respect and protect recognized medical agencies such as Red Cross, Red Crescent, etc.

These ten rules were printed on cards distributed to every service member of the 24th MAU and were discussed at length with every member.

were clearly non-combatants operating under peacetime rules of engagement.[5]

C. The Iranian Government and the October 23 Attack[6]

Following the 1979 revolution spearheaded by the Ayatollah Ruhollah Khomeini, the nation of Iran was transformed into an Islamic theocracy. The new government promptly drafted a constitution, which is still in effect today. The preamble to the 1979 constitution sets forth the mission of the post-revolutionary Iranian state:

> The mission of the Constitution is to realize the ideological objectives of the movement and to create conditions conducive to the development of man in accordance with the noble and universal values of Islam.
>
> With due attention to the Islamic content of the Iranian Revolution, the Constitution provides the necessary basis for ensuring the continuation of the Revolution at home and abroad. In particular, in the development of international relations, the Constitution will strive with other Islamic and popular movements to prepare the way for the formation of a single world community . . . to assure the continuation of the struggle for the liberation of all deprived and oppressed peoples in the world.

The post-revolutionary government in Iran thus declared its commitment to spread the goals of the 1979 revolution to other nations. Towards that end, between 1983 and 1988, the government of Iran spent approximately $50 to $150 million financing terrorist organizations in the Near East.[7] One of the nations to which the Iranian government directed its attention was the war-torn

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[5] It should also be noted that the death certificates issued for the victims of the October 23, 1983 attack did not represent that the victims were killed in action. Instead, the cause of death was listed as "terrorist attack."

[6] The facts contained in the following subsection are based on the trial testimony of Dr. Reuven Paz, director of the Project for the Research of Islamist Movements in Herzliya, Israel, and Dr. Patrick Clawson, deputy director of the Washington Institute for Near East Policy.

[7] Since January 19, 1984, Iran has been designated as a state sponsor of terrorism pursuant to section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j). This designation arose in part as a result of the October 23, 1983 attack.

republic of Lebanon.

"Hezbollah" is an Arabic word meaning "the party of God." It is also the name of a group of Shi'ite Muslims in Lebanon that was formed under the auspices of the government of Iran. Hezbollah began its existence as a faction within a group of moderate Lebanese Shi'ites known as Amal. Following the 1982 Israeli invasion of Lebanon, the Iranian government sought to radicalize the Lebanese Shi'ite community, and encouraged Hezbollah to split from Amal. Having established the existence of Hezbollah as a separate entity, the government of Iran framed the primary objective of Hezbollah: to engage in terrorist activities in furtherance of the transformation of Lebanon into an Islamic theocracy modeled after Iran.

During the March trial in these cases, Dr. Patrick Clawson, a widely-renowned expert on Iranian affairs over the past 25 years, testified that in 1983, Hezbollah was a creature of the Iranian government:

> Both from the accounts of Hezbollah members and from the accounts of the Iranians and of every academic study that I'm aware of, certainly at this time, Hezbollah is largely under Iranian orders. It's almost entirely acting at the – under the order of the Iranians and being financed almost entirely by the Iranians. It comes to be an organization with Lebanese roots and Lebanese activities and more independence from Iran, but that's years past this time frame.
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> * * * * * * * * * * *
>
> THE COURT: In the '83 time frame, it was essentially a tool of Iran.
>
> THE WITNESS: Correct, sir. Indeed, both Iranian and Lebanese observers have described it as being established at Iran's orders and as being a creature of Iran when it began. Hezbollah leaders today will sometimes describe that as the roots of their party and say that it has evolved away from being that.
>
> Q: Was there any other major means of support for Hezbollah other than the Islamic Republic of Iran?

A: Not at this time, no, sir.[8]

Dr. Clawson's testimony was corroborated by Dr. Reuven Paz,[9] who has researched Islamist terrorist groups for the last 25 years:

Q: Now, as of the time of this attack, in October 1983, to what extent was Hezbollah, at that precise moment, dependent upon the support of Iran, and particularly the Iranian Revolutionary Guards, who had been brought in in order to carry out any type of major [military] operation?

A: Well, I would say that they were, at that time, totally relied upon, the Iranian support. We are talking about composing a new group, of Hezbollah, out of people who had very little military experience. They were members, before '82, in groups that actually did not deal with military issues or terrorism. And most of the members during this process of unification that created Hezbollah started to be trained in training camps in the Bekaa Valley, where the main Iranian forces were located.

* * * * * * * * * * *

Q: Do you have an opinion, within a reasonable degree of certainty, as an expert on Islamist terrorism, whether this attack was carried out by Hezbollah, in response to the order which was the subject of the communications intercept in late September 1983?

A: Yes, especially at that time – even today, but especially at that time, when Hezbollah was not yet formed as a strong group, it was totally controlled by Iran and actually served mainly the Iranian interest in Lebanon and [against] Israel.

Q: Do you have an opinion, again within a reasonable degree of certainty, as an expert in Islamist terrorist groups, as to whether Hezbollah, at that time, the fall of 1983, would have had the capacity to carry out an attack of the dimension of the

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[8] Dr. Michael Ledeen, a consultant to the Department of Defense at the time of the Marine barracks bombing and an expert on U.S. foreign relations, testified at trial that "Iran invented, created, funded, trained, and runs to this day Hezbollah, which is arguably the world's most dangerous terrorist organization."

[9] Dr. Paz is the director of the Project for the Research of Islamist Movements and a senior research fellow at The International Policy Institute for Counterterrorism, both of which are based in Herzliya, Israel.

attack around the Marine barracks, in the absence of Iranian scientific, financial, and material assistance?

A: No, I don't think they could have carried out such an attack without Iranian training, without Iranian – Iranian supply of the explosives even, and without directions from the Iranian forces in Lebanon itself.[10]

* * * * * * * * * * *

Q: Dr. Paz, can you describe the – the source of – of this technique of suicide bombing, which was used in the attack on the Marine barracks and since, unfortunately, many other incidents?

A: Yes, this – this modus operandi actually was initiated in Iran and it was – it was not, at that time, used in anywhere in – in the Sunni Muslim world. It was at that time a Shi'ite ideology of self-sacrifice by suicide bombing. It started during the Iran-Iraq war in the '80s, and then under Iranian training and influence and instructions, it started as a modus operandi of terrorist groups – first in Lebanon, by Hezbollah, and then later on it moved to the Palestinian arena, mainly during the '90s.

It is clear that the formation and emergence of Hezbollah as a major terrorist organization is due to the government of Iran. Hezbollah presently receives extensive financial and military technical support from Iran, which funds and supports terrorist activities. The primary agency through which the Iranian government both established and exercised operational control over Hezbollah was the Iranian Ministry of Information and Security ("MOIS"). MOIS had formerly served as the secret police of the Shah of Iran prior to his overthrow in 1979. Despite the revolutionary government's complete break with the old regime, it did not disband MOIS, but

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[10] Robert Baer, a case officer in the Directorate of Operations of the CIA from 1976-97, testified at trial that "Hezbollah wasn't 'formally' created until 1985. What happened was before it was a bunch of agents of Iran. But none of these agents, based on our intelligence, which was . . . outstanding, were operating on their own. One time there was a case where a Hezbollah member went out and kidnapped some children. But that was done independently, and the moment he was caught, he was executed by Hezbollah because he wasn't operating with authority from Iran."

instead allowed it to continue its operations as the intelligence organization of the new government. Based on the evidence presented at trial, the Court finds that MOIS acted as a conduit for the Islamic Republic of Iran's provision of funds to Hezbollah, provided explosives to Hezbollah and, at all times relevant to these proceedings, exercised operational control over Hezbollah.

It is clear that MOIS was no rogue agency acting outside of the control and authority of the Iranian government. Indeed, as Dr. Clawson testified at trial, the October 23 attack would have been impossible without the express approval of Iranian government leaders at the highest level:

> Q: In the fall of 1983, was there anything of a significant nature, and especially a terrorist attack the dimensions of the attack on the Marine barracks of October 23rd, 1983, which would or could have been undertaken by Hezbollah without material support from Iran?
>
> A: Iran's material support would have been absolutely essential for any activities at that time, and furthermore, the politics of the organization [was such] that no one in the organization would have thought about carrying out an activity without Iranian approval and almost certainly Iranian orders.
>
> Q: Is that opinion within a reasonable degree of certainty as an expert on Iran?
>
> A: Oh, absolutely, sir.
>
> Q: Would any operation such as the October 23rd, 1983 attack require the approval within Iran of the Ministry of Information and Security?
>
> Q: Yes, sir.
>
> A: What about Mr. Rafsanjani?
>
> Q: There would have been a discussion in the National Security Council which would involve the prime minister, Mr. Rafsanjani, and it would also have required the approval of Iran's supreme religious leader, Ayatollah Khomeini. We have

many detailed accounts about the approval process from other attacks at this time, and, indeed, from a number of Iranians who became disillusioned within this process and later left.

Q: Doctor, your opinion within a reasonable degree of certainty as an expert on Iran, what was the foreign policy objective of the October 23rd, 1983, attack and other like attacks by Iran during this period?

A: Both to end the Western, especially the American presence in Lebanon, and to establish Iran's image as the leader of the world's radical, anti-Western, anti-American Muslim movement.

The two officials named by Dr. Clawson, the Ayatollah Ruhollah Khomeini and Ali Akbar Hashemi Rafsanjani, were high government officials in the Iranian government, occupying the positions of Supreme Leader and President.[11] The approval of both the Ayatollah Khomeini and President Rafsanjani was absolutely necessary to carry out the continuing economic commitment of Iran to Hezbollah, and to execute the October 23 attack. Given their positions of authority, any act of these two officials must be deemed an act of the government of Iran.

The complicity of Iran in the 1983 attack was established conclusively at trial by the testimony of Admiral James A. Lyons, Deputy Chief of Naval Operations for Plans, Policy and Operation from 1983-85. As deputy chief, Admiral Lyons routinely received intelligence information about American military forces. On October 25, 1983, the chief of naval intelligence notified Admiral Lyons of an intercept of a message between Tehran and Damascus that had been made on or about September 26, 1983. The message had been sent from MOIS to the

[11] Under the 1979 constitution, the Supreme Leader is the highest government official of Iran, followed by the President. The powers of the Supreme Leader include the authority to delineate the general policies of Iran and supervise their execution, assume the supreme command of the armed forces, declare war, mobilize the armed forces, appoint and dismiss key government officials, and issue decrees for national referenda. Arts. 110, 113, Constitution of Iran, 1979.

Iranian ambassador to Syria, Ali Akbar Mohtashemi, who presently serves as an adviser to the president of Iran, Mohammad Khatami.[12] The message directed the Iranian ambassador to contact Hussein Musawi, the leader of the terrorist group Islamic Amal, and to instruct him to have his group instigate attacks against the multinational coalition in Lebanon, and "to take a spectacular action against the United States Marines." Admiral Lyons testified that he has absolutely no doubt of the authenticity or reliability of the message, which he took immediately to the secretary of the navy and chief of naval operations, who viewed it, as he did, as a "24-karat gold document."[13]

Although it is not presently known whether Ambassador Mohtashemi contacted Musawi, evidence was presented at trial that Mohtashemi did proceed to contact a member of the Iranian Revolutionary Guard ("IRG"), and instructed him to instigate the Marine barracks bombing.[14] The Court heard the videotaped deposition testimony of a Hezbollah member known by the pseudonym "Mahmoud," who was a member of the group that carried out the October 23

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[12] Mohtashemi's last name is sometimes given as "Mohtashemi-Pur."

[13] Dr. Michael Ledeen testified at trial that the message intercept was "one of the most impressive works of intelligence analysis that I saw [about the Marine barracks bombing], and it was absolutely convincing." Dr. Reuven Paz testified that he had read and analyzed the message intercept, which he described as "an order to attack the foreign powers on Lebanese soil, meaning the United States, the French paramilitary power, and of course, the Israeli military forces in south Lebanon."

[14] The Iranian Revolutionary Guard, also known as the Pasdaran, has been described as an "elite security and military force that was formed to protect the ideological purity of the Ayatullah Khomeini's Islamic Revolution and [that] has since developed considerable expertise in covert actions overseas." See Paul Quinn-Judge, Stalking Satan: As Their Leader Offers Friendship, Iran's Revolutionary Guards Keep a Menacing Watch over Their Backyard, TIME, March 30, 1998, available at http://www.time.com/time/magazine/1998/int/980330/terrorism.stalking_satan15.html.

attack.[15] Mahmoud, a Lebanese Shi'ite Muslim, testified that Ambassador Mohtashemi contacted a man named Kanani, the leader of the Lebanese headquarters of the IRG. Mohtashemi instructed Kanani to go forward with attacks that had been planned against the 24th MAU and the French paratroopers.[16] Mahmoud testified that a meeting was later held in Baalbek, Lebanon, which was attended by Kanani and Sheik Sobhi Tufaili, Sheik Abbas Musawi, and Sheik Hassan Nasrallah. Nasrallah is the present leader of Hezbollah.[17] Musawi, Nasrallah's immediate predecessor as the leader of Hezbollah, was killed in a February 16, 1992 Israeli attack.[18] Tufaili is a former secretary general of Hezbollah.[19]

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[15] The reliability of Mahmoud's testimony was established by an individual who has worked for the United States government in an intelligence capacity for thirty years, and who is known by the pseudonym "Joseph Salam." The Court admitted Salam as an expert on Islamic terrorist groups, based upon the quality and quantity of knowledge contained in his curriculum vita, which was filed under seal to protect Salam's identity. According to Salam, Mahmoud has provided information to him in the past, and, after later comparison with known objective facts, his information has always been determined to be accurate.

[16] Mahmoud's testimony about Ambassador Mohtashemi is confirmed by Joseph Salam, who testified that although Mohtashemi held the title of Iranian ambassador to Syria, he performed no actual diplomatic function and was "highly placed in the supervision and origination of covert terrorist operations by Iran." It is also independently confirmed by Dr. Michael Ledeen, who testified at trial that "Mr. Mohtashemi-Pur, his nickname in Iran is the Father of Hezbollah. He's the person who created Hezbollah. So of course he had a major involvement in [the Marine barracks bombing] since those were the people who did it." Dr. Ledeen also testified that "there was information of every imaginable type that enabled [the intelligence community] to reconstruct a picture which showed very clearly the Iranian involvement [in the Marine barracks bombing]. I don't know anyone who looked at that information who came to any other conclusion."

[17] See Talks with France Bridge the Diplomatic Gap, TIMES (London), May 26, 2003, at 13, available at 2003 WL 3134823 ("[Israeli Foreign Minister Sylvan Shalom's] warning came as the leader of Hezbollah, Sheikh Hassan Nasrallah, urged all anti-Israeli groups in Lebanon to take up arms in preparation for a possible Israeli attack.").

[18] See Kenneth R. Timmerman, Likely Mastermind Of Tower Attacks, INSIGHT, Dec. 31, 2001, at 18, available at 2001 WL 29585000 ("On March 17, 1992, a Hezbollah strike team

During this meeting, Kanani and the Hezbollah members formed a plan to carry out simultaneous attacks against the American and French barracks in Lebanon.[20] Mahmoud described the meeting and its aftermath:

> They got the order. They met and adopted the operation against the Marines and the French barracks in the same time. The Marines operation was done. They moved – they moved with one Iranian and one Shiite from the – Southern Lebanon over the mountain road to Hartareq Biralabin [phonetic spelling]. They stayed two days there.
>
> The – the cars were built, equipped, in Biralabin in a warehouse near a – gas station . . . underground. They built the cars. They equipped the cars there. That's their center.
>
> One Dodge, one red Dodge, that was painted exactly like the other – the real Dodge that was providing water and other stuff to the Marines, and they moved it to the airport road where they put the hold on – ambush and hold the real car when she arrived. They stopped the real car and they moved with the fake one that was built with explosives toward the Marine barracks.

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leveled the Israeli Embassy in Buenos Aires, killing 29 persons and wounding 242. Hezbollah said the attack was intended to avenge the killing of Lebanese Hezbollah leader Sheik Abbas Musawi, whose convoy was obliterated by Israeli helicopter gunships in South Lebanon one month earlier."); Gareth Smyth, Sheikh Hassan Nasrallah's Holy War, FIN. TIMES, Aug. 30, 2001, available at 2001 WL 26065111 ("On February 16, 1992, Israeli helicopter gunships flew into south Lebanon and ambushed a convoy of cars, killing Abbas Musawi, the general secretary of Hizbollah. . . . [I]t brought to Hizbollah's top position Israel's most effective adversary of the next decade. With his beard, turban and black-rimmed glasses, Sheikh Hassan Nasrallah is recognised well beyond Lebanon's borders.").

[19] See Hikmat Chreif, Hezbollah Dissidents Demonstrate Against Normalization with Israel, AGENCE FRANCE-PRESSE, Jan. 7, 2000, available at 2000 WL 2708811 ("About 3,000 supporters of Lebanese Hezbollah dissident Sobhi Tufaili demonstrated in Baalbek Friday against any normalization with Israel and visits by Israeli tourists to Lebanon. . . . Tufaili, who used to be secretary general of Hezbollah, criticized the group's leadership for neglecting the needs of the 'underprivileged,' especially in the Baalbek-Hermel area, which had been a major drug-growing area until a crackdown in 1992.").

[20] Approximately eight minutes after the attack on the Marine barracks, a similar attack was attempted against the French barracks. Although the driver of the vehicle carrying the explosive device was shot and killed before the vehicle could enter the barracks, the device was detonated by remote control, killing 56 French soldiers.

C. The Attack

As testified by Mahmoud, after the meeting in Baalbek, a 19-ton truck was disguised so that it would resemble a water delivery truck that routinely arrived at the Beirut International Airport, which was located near the U.S. Marine barracks in Beirut, and modified the truck so that it could transport an explosive device. On the morning of October 23, 1983, members of Hezbollah ambushed the real water delivery truck before it arrived at the barracks. An observer was placed on a hill near the barracks to monitor the operation. The fake water delivery truck then set out for the barracks, driven by Ismalal Ascari, an Iranian.

At approximately 6:25 a.m. Beirut time, the truck drove past the Marine barracks. As the truck circled in the large parking lot behind the barracks, it increased its speed. The truck crashed through a concertina wire barrier and a wall of sandbags, and entered the barracks.[21] When the truck reached the center of the barracks, the bomb in the truck detonated.

The resulting explosion was the largest non-nuclear explosion that had ever been detonated on the face of the Earth. The force of its impact ripped locked doors from their doorjambs at the nearest building, which was 256 feet away. Trees located 370 feet away were shredded and completely exfoliated. At the traffic control tower of the Beirut International Airport, over half a mile away, all of the windows shattered. The support columns of the Marine barracks, which were made of reinforced concrete, were stretched, as an expert witness described, "like rubber bands." The explosion created a crater in the earth over eight feet deep. The four-story Marine barracks was reduced to fifteen feet of rubble.

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[21] Concertina wire is a length of barbed wire that is extended into a spiral for use as a barrier, as on a fence. It is employed by the U.S. armed forces to prevent entry into restricted areas by unauthorized persons.

The force of the explosion was equal to between 15,000 to 21,000 pounds of TNT. FBI and ATF explosives experts both concluded that the explosive material was "bulk form" pentaerythritol tetranitrate, or PETN. Danny A. Defenbaugh, the on-scene FBI forensic explosive investigator, testified as to his findings:

> [W]e were able to, through the forensic residue analysis, identify the explosive material, and it was unconsumed particles of PETN . . . .
>
> PETN is a primary explosive that is manufactured commercially and primarily for U.S. military purposes. It is a primary explosive that is used in detonating cord. Detonating cord is nothing more than a plastic and fiber-wrapped cord that has the PETN, which looks like a white powder . . . that is then extruded inside of that cord . . . .
>
> In this case, it was not [consumed]; we found unconsumed particles of PETN. That was just like we had found also in the American Embassy bombing. What that means is that it had to have been from a bulk explosive, it had to have been from a manufacturer.

Defenbaugh explained that when the commercially-manufactured form of PETN is detonated, it is completely consumed in the ensuing explosion. The presence of unconsumed particles of PETN at the Marine barracks blast site, therefore, indicated that the PETN used in the bomb had not been the standard commercially-available form of the explosive. Instead, it had been the raw "bulk form" of PETN, which is not generally sold commercially. In the Middle East, the bulk form of PETN is produced by state-sponsored manufacturers for military purposes. In 1983, bulk form PETN was not manufactured in the nation of Lebanon. However, at that time, bulk form PETN was manufactured within the borders of Iran.

Warren Parker, who served as an explosives expert with the Army and the ATF for forty years, testified that the effectiveness of the attack demonstrated that it had been the result of careful planning.[22] Parker also concluded, based on the degree of planning and sophistication

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[22] Parker testified at trial:

that went into the attack, that a group of individuals without specialized training in explosives could not have carried it out:

> Q: Mr. Parker, in your opinion, within a reasonable degree of certainty as an expert in explosives, could this bombing have been successfully carried out by a group of individuals with limited education, possessing minimal literacy and no specialized training in explosives?
>
> A: No, sir.
>
> Q: And what do you base that opinion on?
>
> A: The degree of planning, the degree of sophistication of this bombing. . . . The fact that it was a significant amount of a military-type explosive. These are not things that you just go down to the drugstore and buy a pound of, these are not things [for which] you buy innocuous materials and manufacture in your backyard. PETN is manufactured in factories that have specialized tools and equipment and knowledge.
>
> I think that I will concur with Mr. Defenbaugh's conclusion that it is a state- or military-run factory that produces this type of material, and I think the fact that it was carried out so successfully and not bungled really enhances the fact that somebody had practiced this before. . . .
>
> [D]uring the, say, late '60s, early '70s, clear up into the '80s, there were state-sponsored training camps involving the use of explosives for political gain, and these training camps used as part of their training, and I have seen

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In the Marine barracks [attack], we have considerable planning that had to occur. They had to know what the interior of the building looked like, and, in my background and experience, I believe that the placement of that in the center of the building with the atrium opening up to the top was probably key in causing most of the deaths.

So it took someone getting in there, doing a lot of pre-scouting, making sure that they could, in fact, penetrate the barriers, the barbed-wire barriers, negotiate the pipes that were placed in the way to deter traffic. They had to use a site that had a direct line because they couldn't afford to take a long time. The Marines were all armed. While they didn't have ammunition ready, and that was probably known, they would have likely not made it inside. So if they had tried to come through some sort of a circuitous route rather than a direct attack down through those barrier pipes right over [the] top of what I believe to be the only place that you could have gotten a truck of that size into the building without it being impinged or stopped by some part of the building itself – so they knew that that was a good entrance. They knew that the truck could negotiate those pipes and that the weak part for entrance was there at the sandbag guard barricade and that the interior of the building was the vulnerable spot of that building.

materials seized from those that included pages from military manuals, U.S. military as well as English and French military manuals, as part of their training in calculating the explosive charges.

Q: I believe this Court in [Eisenfeld v. Islamic Republic of Iran] received testimony with regard to a training camp with regard to handling explosives just outside Tehran, Iran, run by the Iranian government. Would this be the kind of thing you're talking about, an intensive course over three or four months?

A: Yes, sir, those are exactly the kinds. There were several of those. The one in Iran was just one of several but typical of that.

Based on the evidence presented by the expert witnesses at trial, the Court finds that it is beyond question that Hezbollah and its agents received massive material and technical support from the Iranian government. The sophistication demonstrated in the placement of an explosive charge in the center of the Marine barracks building and the devastating effect of the detonation of the charge indicates that it is highly unlikely that this attack could have resulted in such loss of life without the assistance of regular military forces, such as those of Iran.

As a result of the Marine barracks explosion, 241 servicemen were killed, and many others suffered severe injuries. Steve Russell, the sergeant of the guard at the time of the explosion, testified that he had observed several victims of the bombing who were in severe pain before their deaths. Sgt. Russell stated that death was not instantaneous for many of the victims, and that many of the victims of the explosion endured extreme pain and suffering.

During the trial, family members of the victims testified about the anguish they endured when they learned of the attack. Deborah Peterson described what happened when she received word of the attack on the Marine barracks, where her brother, Corporal James Knipple, was stationed:

It was Sunday morning and I was sleeping and I got a phone call from my father. He had

a frantic sound to his voice that I had never heard before and he said – he just screamed, "Debbie, our worst nightmare has been realized. And I turned on the television and saw what was happening. . . .

It seemed like an awful long time [before word of his death was received]. We waited and waited and waited. We watched every television, we were – I mean, the house was filled with people. We watched the television, we got every newspaper, photograph, magazine we could. We looked for his face among the survivors. We even thought we saw him a couple of times. All of his friends gathered, neighbors, and we held out hope even though the count was rising. . . .

I think around November 7th or 8th, we got a phone call . . . They wanted dental information and identifying marks, anything we could give them, and my father told them about a scar on his forearm. The next day, they told us that he was identified.

We brought him home on the 9th, on his 21st birthday, and we buried him on the 10th, the Marine Corps birthday. I remember the casualty officer, he was all by himself, he came to the house. We were all gathered around, and he told us that Jim was among the dead. It was official.

I remember the casualty officer sitting next to my father and they both seemed really quiet while everybody else was screaming and yelling and crying, and my dad just sat there really quiet. And then when everybody left, he went downstairs and started to scream Jim's name over and over and over again at the top of his lungs.

III. CONCLUSIONS OF LAW

Having made the above-listed findings of fact, the Court now enters the following conclusions of law:

1. An action brought against a foreign state, its intelligence service acting as its agent, and its officials, acting in their official capacity, must be brought under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-1611 et seq. The FSIA must be applied in every action involving a foreign state defendant. Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 489; 28 U.S.C. § 1330. The sole bases for subject matter jurisdiction in an action against a foreign state defendant are the FSIA's enumerated

exceptions to immunity. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989). This Court lacks subject matter jurisdiction over the present actions unless they fall within one of the FSIA's enumerated exceptions to foreign sovereign immunity. See Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993). The FSIA has been construed to apply to individuals for acts performed in their official capacity on behalf of either a foreign state or its agency or instrumentality. El-Fadl v. Central Bank of Jordan, 75 F.3d 668, 671 (D.C. Cir.1996) (citing Chuidian v. Philippine Nat'l Bank, 912 F.2d 1095, 1101-1103 (9th Cir. 1990).

2. When it passed the Antiterrorism and Effective Death Penalty Act of 1996, Congress lifted the immunity of foreign states for certain sovereign acts that are repugnant to the United States and the international community, and created a right of civil action based upon the commission of terrorist acts. Pub. L. 104-132, Title II, § 221(a), (April 24, 1996), 110 Stat. 1214, codified at 28 U.S.C.A. § 1605 (West 1997 Supp.). That Act created an exception to the immunity of those foreign states officially designated by the State Department as state sponsors of terrorism, if the foreign state so designated commits a terrorist act, or provides material support and resources to an individual or entity which commits a terrorist act, which results in the death or personal injury of a United States citizen. See 28 U.S.C. § 1605(a)(7); see also H. R. REP. NO. 104-383, at 137-38 (1995).

3. Iran has continuously been designated a state sponsor of terrorism by the U.S. Department of State since January 19, 1984.

4. Applying the above-mentioned law, as a consequence of the actions of the defendants, this Court concludes that it possesses subject matter jurisdiction over the defendants in these actions, the Islamic Republic of Iran and the Iranian Ministry of Information and Security.

5. 28 U.S.C. § 1605(a)(7) provides for personal jurisdiction over foreign state sponsors of terrorism. As this Court has noted in a previous case involving the government of Iran, "[because] international terrorism is subject to universal jurisdiction, Defendants had adequate notice that their actions were wrongful and susceptible to adjudication in the United States." Flatow, 999 F. Supp. at 14 (citing Eric S. Kobrick, The Ex Post Facto Prohibition and the Exercise of Universal Jurisdiction over International Crimes, 87 COLUM. L. REV. 1515, 1528-30 (1987)); see also Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 88-89 (D.C. Cir. 2002) ("In enacting [28 U.S.C. § 1605(a)(7)], Congress sought to create a judicial forum for compensating the victims of terrorism, and in so doing to punish foreign states who have committed or sponsored such acts and deter them from doing so in the future.")

6. Applying the above-mentioned law, this Court concludes that it possesses personal jurisdiction over the defendants in these actions, the Islamic Republic of Iran and the Iranian Ministry of Information and Security.

7. 28 U.S.C. § 1605(f) provides for a statute of limitations of "10 years after the date on which the cause of action arose," and provides for equitable tolling during the "period during which the foreign state was immune from suit."

8. The state of Iran was immune from suit until passage of Pub. L. 104-132, which was made effective on April 24, 1996. Accordingly, the Court concludes that the statute of limitations contained in 28 U.S.C. § 1605(f) does not bar these actions.

9. In a memorandum opinion issued December 18, 2002, this Court stated that if the plaintiffs in these actions proved that the U.S. military service members at issue in these cases were part of a peacekeeping mission and that they operated under peacetime rules of engagement, they would qualify for recovery. As set forth in the above findings of fact, the plaintiffs have demonstrated that the U.S. military service members at issue were part of a peacekeeping mission, and that they were operating under peacetime rules of engagement. Therefore, the Court concludes that the military service members at issue in these cases qualify for recovery.

10. A foreign state is liable for money damages under the FSIA "for personal injury or death that was caused by an act of . . . extrajudicial killing, or the provision of material support or resources . . . for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." 28 U.S.C. § 1605(a)(7). The foreign state

must be designated as a state sponsor of terrorism under either section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. 2405(j) or section 620A of the Foreign Assistance Act of 1961, 22 U.S.C. 2371, at the time that the act occurred, unless the foreign state is thus designated later as a result of that act. Id. Either the victim or the plaintiff must have been a United States national at the time of the act. Id. Additionally, the act must be such that it would be actionable if the United States, its agents, officials or employees within the United States engaged in similar conduct. The Court concludes, based on the above findings of fact, that plaintiffs in these actions have established all of these elements by clear and convincing evidence.

11. The FISA utilizes the same definition of "extrajudicial killing" as the Torture Victim Protection Act of 1991, which defines an "extrajudicial killing" as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples. . . ." Pub. L. 102-256, 106 Stat. 73 (1992). The Court concludes that the act undertaken by agents of Hezbollah – the development and detonation of an explosive charge in the barracks of the 24th MAU on October 23, 1983, which resulted in the deaths of over 241 peacekeeping American servicemen – satisfies the FISA's definition of an "extrajudicial killing."

12. The Court finds that MOIS, acting as an agent of the Islamic Republic of Iran, performed acts on or about October 23, 1983, within the scope of its agency (within the meaning of

28 U.S.C. § 1605(a)(7) and 28 U.S.C.A. § 1605 note), which acts caused the deaths of over 241 peacekeeping servicemen at the Marine barracks in Beirut, Lebanon. Specifically, the deaths of these servicemen were the direct result of an explosion of material that was transported into the headquarters of the 24th MAU and intentionally detonated at approximately 6:25 a.m., Beirut time by an Iranian MOIS operative. The Court therefore concludes that MOIS actively participated in the attack on October 23, 1983, which was carried out by MOIS agents with the assistance of Hezbollah.

13. The Court concludes that the deaths of over 241 peacekeeping servicemen at the Marine barracks in Beirut, Lebanon were caused by a willful and deliberate act of extrajudicial killing.

14. As the result of the deaths of the 241 American servicemen in Beirut, Lebanon, their parents, surviving siblings, children, and spouses have suffered and will continue to suffer severe mental anguish and loss of society.

15. It is beyond dispute that if officials of the United States, acting in their official capacities, provided material support to a terrorist group to carry out an attack of this type, they would be civilly liable and would have no defense of immunity. See 42 U.S.C. § 1983; Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

16. The Court concludes that the defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, are jointly and severally liable to the plaintiffs for compensatory and punitive damages.

17. As to each claim of each Complaint, the Court will make a determination of the proper amount of compensatory damages after its receipt of reports from the special masters appointed by the Court. The Court will also make a determination as to punitive damages at that time.

IV. CONCLUSION

The Court is mindful that some may question the utility of the present suit. During the March trial, the Court heard testimony from a number of witnesses as to the reasons why this suit was brought, and as to its potential efficacy.

Dr. Patrick Clawson, deputy director of the Washington Institute for Near East Policy, described the manner in which civil judgments for acts of state-sponsored terrorism have had a noticeable impact upon the present regime in Iran:

> Q: To what extent since its creation in 1979 has the Islamic Republic of Iran been susceptible to influence because of economic sanctions? By sanctions, I don't mean something that was stated, but simply having to pay out bucks, whether it's in damages in personal injury cases or damages awarded by a tribunal, punitive damages, anything of that sort?
>
> A: To begin with, the release of those held hostage at the American Embassy in Tehran, most Iranian observers think that the American freezing of billions of dollars of Iranian assets and the eventual negotiations which really hinged around

how much money Iran was going to get back is a good example from the very beginning of this process of Iran's susceptibility to economic pressure, and there have been a number of situations since in which Iran has been deflected from its main course by economic pressures. For instance, the Europeans [were] successful at doing that in the early 1990s, deflecting Iran from terrorist activities in European soil.

* * * * * * * * * * *

Q: Given the enormity of the offense committed on October 23rd, 1983, in the attack of the Marine barracks, how much of that sum in the pockets of Iran would have to be subtracted before – in order to give some indication that they would start to change policy?

A: Well, sir, I would – the larger the sum, the more of an impact this is going to have on the Iranians, and if this court case results in a large judgment, be it for compensatory or punitive damages, that is very likely to receive the attention of a fair number of policymakers in Iran, and I have great confidence that the Iranian leaders will consider that in deciding which way to proceed.

* * * * * * * * * **

I think, sir, that the Iranians have been extraordinarily sensitive to court actions, whether it was in Germany or in Argentina or in the United States, which make any references to the top leadership of the country being involved in these cases. That has been a matter of greatest sensitivity in Iran, and there have been several cases in which the Iranians reacted extremely strongly, particularly to suggestions that the supreme religious leader was involved in any way in these activities. . . . I have to say that I think that they pay quite detailed attention to these judgments . . . .

* * * * * * * * * *

I would say that based on the past precedent about the way that these court cases have been viewed, what will be looked at very closely is two things. One is the size of the dollars involved, and the other is whether or not there is any change in the way that the court views the matter. So this case, if it involves a much larger judgment in dollar terms than previous cases, will be regarded as a toughening of the American stance.

On the other hand, there will be close examination of whether or not this case in its legal reasoning or in the application or non-application of punitive damages involves any change in the way in which a court rules. So, for instance, a lack of punitive damages would be regarded as an indication that the United States Government is making a gesture towards Iran.

Q: A softening of our position.

A: Correct, sir. . . .

Q: So as I read you correctly, less in punitive damages than has been awarded in cases before would be to the Iranians a softening of the American resolve; more would be a hardening of the American resolve?

A: Correct, sir.

The Court also heard the testimony of Dr. Michael Ledeen[23] as to the likely effect of an award of damages in the present actions:

THE COURT: From your experience dealing all these years now with Iran, have you seen, from the court cases where punitive damages have been entered by the courts, what impact, if any, that has had in Iran and on the government, and what do you think of that?

A: Well, it hurts the government because it stings them, and the people see – what the Iranian people need to reach the point where they are willing to risk their lives to bring down this regime is that the civilized world understands what kind of regime it is and therefore would welcome that kind of event; and consequently, in my opinion, every time that regime is condemned and punished in a Western court, that hastens the moment of the downfall of that regime.[24]

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[23] As noted above, Dr. Ledeen served as a consultant to the U.S. Defense Department at the time of the October 23, 1983 bombing, and is one of the premier experts in the nation on the subject of U.S. foreign relations. He is presently a resident scholar at the American Enterprise Institute.

[24] Regarding the tension between the Iranian government and the populace, Dr. Ledeen testified that

> the people of Iran hate the regime. Even the public opinion polls taken by the regime itself show that 70-plus percent of the Iranian people don't like the regime, would like a national referendum, deplore the foreign policy of the regime and want better relations with the United States, and you would have to figure that if 70 percent of Iranians will tell people that they know are coming from the Ministry of Information that they hate the regime, that the real number must be something higher than that.

The Court also heard testimony from the men and women who have brought the present actions about their reasons for so doing. During the trial, Lt. Col. Howard Gerlach, who was paralyzed in the October 23 attack, was asked about what he hoped to achieve by participating in these actions:

> Well, I guess there's three words: accountability, deterrence and justice. And they are interrelated. The accountability, and I swear it was on Sunday, I was listening to a rerun of one of the TV – I don't know, Meet the Press or whatever, but Vice President Cheney was talking and he was saying that they, the terrorists feel that they can do things with impunity, and he said ever since the Marines in '83. Yes, there hasn't been any accountability.
>
> Deterrence effect is, in some way, and this is also what he was talking about, was one thing we have to go after – and I think I'm stating this correctly; this is what I heard, is the funding. It's the funding. Even on the radio coming over here, we heard some talk about funding for terrorist organizations.
>
> Then the third thing is the justice, and this refers to the people, a good portion of [whom] are in this room. . . . They lost a large chunk of their lives, young Marines, sons, husbands, fathers, brothers. They were attempting to do a noble thing. They went as peacekeepers in the tradition of this country. . . [W]e weren't trying to conquer land, we weren't trying to get anything for ourselves; we were really trying in a humanitarian way to help those people in Lebanon. I think this is . . . the day in court, literally and figuratively speaking, for recognition of just how great these guys were.

The Court also heard the testimony of Lynn Smith Derbyshire, whose brother, Capt. Vincent Smith, was killed in the October 23 attack:

> I'm not sure it's true that time heals wounds, but even so, a wound which has healed over time is not the same thing as not having a wound. Even a healing wound gets reopened from time to time.
>
> * * * * * * * * * *
>
> [A]s I have talked to so many of the Beirut families, I believe that many of them would concur with me when I say that the pain does not stop when you bury the dead; it is only the very beginning. We feel this loss over and over and over again. It does not go away and it does not lessen with time; that is a myth. It is more like teaching someone who has a chronic pain disorder how to manage and embrace their pain than it is a lessening of pain.

* * * * * * * * * *

I have spoken to quite a number of the family member and I think we're all – I think they would all agree with me when I tell you that what Vince would have wanted was justice.

Vince was a fair-minded man. Vince was a man of integrity, as I know so many of the men who were lost that day were. It's the kind of men Marines are. That's what the Marine Corps produces. And Vince would have wanted us to fight.

Vince would have said . . . we must hold these men accountable. Vince would have said that it is time for justice, that it is time for compensation, that it is time to make it – to make them pay enough to make them stop, because Vince was a man who believed in what was right, and if he had lived, he would be sitting here in my place and he would be saying, "Come on, sis, let's go get them."

But he can't be here, and in his name, and in his honor, and with the permission of some of the other family members here . . . in their names and in their honor, I salute them, and we stand together to do what they cannot do for themselves.

There is little that the Court can add to the eloquent words of these witnesses. No order from this Court will restore any of the 241 lives that were stolen on October 23, 1983. Nor is this Court able to heal the pain that has become a permanent part of the lives of their mothers and fathers, their spouses and siblings, and their sons and daughters. But the Court can take steps that will punish the men who carried out this unspeakable attack, and in so doing, try to achieve some small measure of justice for its survivors, and for the family members of the 241 Americans who never came home.

A separate order accompanies this opinion.

Date: 5-30-03

Royce C. Lamberth
United States District Judge

Annex 19

***Estate of Steven Bland, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the District of Columbia, Order (Liability – taking judicial notice of the Peterson judgment of 30 May 2003), 6 December 2006, Case No. 1:05-cv-02124**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE ESTATE OF STEPHEN B. BLAND
By and through its Administrator,
RUTH ANN BLAND, et al,

Plaintiffs

v.

THE ISLAMIC REPUBLIC OF IRAN, et al,

Defendants

Civil Action No. 05-02124 (RCL)

ORDER

This matter having come before the Court on Plaintiffs' Motion With Points and Authorities to Take Judicial Notice of This Court's May 30, 2003 Findings of Fact and Conclusions of Law in Related Cases, and the Court having been sufficiently advised, the Court hereby takes judicial notice of the findings of fact and conclusions of law contained in the Memorandum Opinion filed by this Court in the consolidated cases of *Peterson, et al. v. Islamic Republic of Iran, et al.*, Civ. No. 01-02094 (RCL) (D.D.C.) and *Boulos, et al. v. Islamic Republic of Iran et al.,* Civ. No. 01-02684 (RCL) (D.D.C). It is hereby

ORDERED that Judgment be, and hereby is, entered on behalf of the Plaintiffs The Estate of Stephen B. Bland, by and through its Administrator, Ruth Ann Bland, *et al.*, as to all issues of liability against the Defendants, The Islamic Republic of Iran and the Iranian Ministry of Information and Security. It is further

ORDERED that all claims for damages in this action be submitted to Special Masters to be appointed by the Court. It is further

ORDERED that, following receipt of reports from Special Masters, and in consideration of the findings and evidence presented in those proceedings, the Court will enter judgment as to each claim for compensatory damages.

SO ORDERED.

Dated: Dec. 6, 2006

Royce C. Lamberth
United States District Judge

Annex 20

***Ashton, et al. v. al Qaeda Islamic Army, et al.,* U.S. District Court for the Southern District of New York, Sixth Amended Complaint, 30 September 2005, Case No. 02-cv-6977**

Excerpts: p. 1 & pp. 98-103

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

03 MDL 1570(RCC)

SIXTH AMENDED CONSOLIDATED MASTER COMPLAINT

02 CV 6977(RCC)

Kreindler & Kreindler LLP

KATHLEEN ASHTON, as Administrator
of the Estate of Thomas Ashton, Deceased
and on behalf of all survivors of Thomas Ashton;

JOSEPHINE ALGER and FREDERICK ALGER, as Co-Executors of the Estate of David D. Alger, Deceased
and on behalf of all of survivors of David D. Alger;

ANGELICA ALLEN, as Administrator
of the Estate of Eric Allen, Deceased
and on behalf of all survivors of Eric Allen;

GEORGE ANDRUCKI and MARY ANDRUCKI, as co-Administrators of the Estate of Jean Andrucki, Deceased
and on behalf of all survivors of Jean Andrucki;

ALEXANDER PAUL ARANYOS and
WINIFRED ARANYOS, as co-Administrators
of the Estate of Patrick Michael Aranyos, Deceased
and on behalf of all survivors of Patrick Michael Aranyos;

MARGARET ARCE, as Administrator
of the Estate of David Gregory Arce, Deceased
and on behalf of all survivors of David Gregory Arce;

VICKIE ROSE ARESTEGUI, as Legal Representative
of the Estate of Barbara Jean Arestegui, Deceased
and on behalf of all survivors of Barbara Jean Arestegui;

MARGIT ARIAS, as Administrator
of the Estate of Adam Peter Arias, Deceased,
and on behalf of all survivors of Adam Peter Arias;

EVELYN ARON, as Executor
of the Estate of Jack Charles Aron, Deceased
and on behalf of all survivors of Jack Charles Aron;

NANCY BADAGLIACCA, as Administrator
of the Estate of John J. Badagliacca, Deceased

MAYORE ESTATES, LLC and
80 LAFAYETTE ASSOCIATES, LLC

02 CV 7214(RCC)

Jaroslawicz & Jaros, Esqs.

Plaintiffs,

- against -

AL QAEDA ISLAMIC ARMY

TERRORIST HIJACKERS
THE ESTATE OF AHMED, FAYEZ
THE ESTATE OF AL-GHAMDI, AHMED
THE ESTATE OF AL-GHAMDI, HAMZA
THE ESTATE OF AL-GHAMDI, SAEED
THE ESTATE OF AL-HAZMI, NAWAF
THE ESTATE OF AL-HAZMI, SALEM
THE ESTATE OF AL-HAZNAWI, AHMED IBRAHIM A.
THE ESTATE OF AL-MIDHAR, KHALID
THE ESTATE OF AL-NAMI, AHMED
THE ESTATE OF AL-OMARI, ABDULAZIZ
THE ESTATE OF AL-SHEHHI, MARWAN
THE ESTATE OF AL-SHEHRI, MOHAND
THE ESTATE OF AL-SHEHRI, WAIL
THE ESTATE OF AL-SHEHRI, WALEED M.
THE ESTATE OF AL-SUQAMI, SATAM M. A.
THE ESTATE OF ATTA, MOHAMMED
THE ESTATE OF HANJOUR, HANI
THE ESTATE OF JARRAH, ZIAD SAMIR
THE ESTATE OF MOQED, MAJED
MOUSSAOUI, ZACARIAS

THE REPUBLIC OF SUDAN
AL-BASHIR, OMAR HASSAN AHMAD
AL-TURABI, HASSAN
NATIONAL ISLAMIC FRONT

ISLAMIC REPUBLIC OF IRAN
BLOKIAN, GENERAL ALI
FALAHYAN, ALI
ISLAMIC REVOLUTIONARY GUARD CORPS a/k/a IRGC
LASHKAR FEDAYAN-E-ISLAMI a/k/a Islamic Martyrs Brigade
KHAMEINI, AYATOLLAH ALI
MINISTRY OF INTELLIGENCE AND SECURITY a/k/a MOIS
NAJAF-ABADI, QORBAN ALI
OL-ESLAM, HOSEYN SHAYKH
RAYSHARI, MOMAMMED MOHAMMADI
REZA'I, GENERAL MOHSEN
SAFAVI, GENERAL YAHYA RAHIM
SALIM, AHMAD SALAH

SAVEHI, MAHDI CHAMRAN

THE REPUBLIC OF IRAQ
AL-ANI, AHMED KHALIL IBRAHIM SAMIR
AL-HIJAZI, FARUQ
HUSSEIN, SADDAM
RAMADAN, TAHA YASSIN

CO-CONSPIRATOR
ABU ZUBAYDAH a/k/a Zayn al Abidin Muhammad Husayn Tariq
AHMAD, MUSTAFA MUHAMMED a/k/a Mustafa Ahmed Al-Hasawi
AKIDA BANK PRIVATE LIMITED a/k/a Akida Islamic Bank International Limitied a/k/a Iksir International Bank Limited
AL-ADEL, SAIF
AL-ALI, SULAIMAN
AL-AQEEL, AQEEL
AL-BAYOUMI, OMAR a/k/a Abu Imard
AL-BUTHE, SOLIMAN H.S.
AL-HARAMAIN ISLAMIC FOUNDATION
AL-HIJRAH CONSTRUCTION AND DEVELOPMENT LTD.
AL-KADI, MANSOUR
AL-NASHIRI, ABD AL-RAHIM a/k/a Bilal Bin Marwan a/k/a Umar Mohammed al-Harazi
AL-QADI, YASSIN a/k/a Yassin al-Kadi
AL-QARDAWI, SHEIKH YUSUF
AL-RAJHI BANKING & INVESTMENT CORPORATION
AL-RAJHI, ABDULLAH SULAIMAN
AL-RAJHI, SALEH ABDULAZIZ
AL-RAJHI, SULAIMAN ABDULAZIZ
AL-RASHID TRUST
AL-SHAMAL ISLAMIC BANK
AL-TALIB, HISHAM
AL-TURKI, ABDULLAH BIN ABDUL MUHSEN
AL-ZAWAHIRI, AYMAN
ALAMOUDI, ABDURAHMAN
ARADI, INC.
ARNAOUT, ENAAM M.
ASAT TRUST REGISTERED
ASHRAF, M. OMAR
ASHRAF, MUHAMMAD
BAHAJI, SAID
BAHARETH, MOHAMMED
BAHFZALLAH, HASSAN A.A.
BANK AL TAQWA LIMITED, a/k/a Al Taqwa Bank
BARZINJI, JAMAL
BASHA, ADNAN
BATTERJEE, SHEIK ADEL GALIL
BAYAZID, MOHAMED
BENEVOLENCE INTERNATIONAL FOUNDATION, INC.
BIHEIRI, SOLIMAN S.

BIN LADEN, ABDULA
BIN LADEN, BAKR M
BIN LADEN, OSAMA
BIN MAHFOUZ, ABDUL RAHMAN KHALID
BIN MAHFOUZ, KHALED
BINALSHIBH, RAMZI MOHAMMED ADBULLAH a/k/a Ramzi Mohamed Abdallah Omar
DALLAH AL BARAKA GROUP LLC
DALLAH AVCO TRANS ARABIA CO. LD.
DAR-AL-MAAL AL ISLAMI TRUST
DARKAZANLI, MAMOUN
EGYPTIAN ISLAMIC JIHAD
EL-HAGE, WADIH
EL-MOTASSADEQ, MOUNIR
FAISAL ISLAMIC BANK
GHATY, PEROUZ SEDA
GLOBAL DIAMOND RESOURCE
GLOBAL RELIEF FOUNDATION, INC.
GROVE CORPORATE, INC.
GUM ARABIC CO. LTD.
HAMDI, TARIK
HEKMATYAR, GULBUDDIN
HIMMAT, ALI GHALEB
HUBER, ARMAND ALBERT FRIEDRICH a/k/a Ahmed Huber
INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT)
INTERNATIONAL ISLAMIC RELIEF ORGANIZATION (IIRO)
JAGHLIT, MOHAMMED
JULAIDAN, WA'EL HAMZA a/k/a Al Hasan al Madani
KAMEL, SALEH ABDULLAH
KHALIFA, MOHAMMED JAMAL
MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY
MANSOUR, MOHAMED
MANSOUR, ZEINAB a/k/a Zeinab Mansour Fattouh
MAR-JAC INVESTMENTS, INC.
MAR-JAC POULTRY
MIGA – MALAYSIAN SWISS, GULF AND AFRICAN CHAMBER, a/k/a Camera di Commercio, Industria e Turismo per Gli Stati Arabi del Golfo e la Svizzera a/k/a Gulf Center
MIRZA, M. YAQUB
MOHAMMED, KHALID SHEIKH
MUHAMMAD, SHEIKH OMAR BAKRI
MULLAH OMAR
MUSLIM BROTHERHOOD
MUSLIM WORLD LEAGUE
MUWAFFAQ FOUNDATION a/k/a Blessed Relief Foundation
NADA MANAGEMENT ORGANIZATION SA, a/k/a al Taqwa Management Organization
NADA, YOUSSEF MUSTAFA
NASCO NASREDDIN HOLDING SA
NASEEF, ABDULLAH OMAR
NASREDDIN, AHMED IDRIS, a/k/a Nasreddin Ahmed Idris
NATIONAL COMMERCIAL BANK OF SAUDI ARABIA
NEW DIAMOND HOLDINGS

PIEDMONT POULTRY
PRINCE MOHAMMED AL FAISAL AL SAUD
PRINCE NAYEF BIN ABDULAZIZ AL SAUD
PRINCE SALMAN BIN ABDULAZIZ AL SAUD
PRINCE SULTAN BIN ABDULAZIZ AL SAUD
PRINCE TURKI AL FAISAL AL SAUD
RABITA TRUST
RASHID, MUFTI MOHAMMED
SAAR FOUNDATION
SAFA TRUST
SANABEL AL-KHEER, INC.
SANA-BELL, INC.
SANABIL AL-KHAIR
SAUDI BIN LADEN GROUP
SAUDI HIGH COMMISSION a/k/a The Saudi High Relief Commission)
SAUDI JOINT RELIEF COMMITTEE
SAUDI RED CRESCENT COMMITTEE
SEDKY, SHERIF
SUCCESS FOUNDATION
TADAMON ISLAMIC BANK
TAIBAH INTERNATIONAL AID ASSOCIATION
THE TALIBAN
TOTONJI, AHMED
WORLD ASSEMBLY FOR MUSLIM YOUTH
YOUSSEF M. NADA ESTABLISHMENT
YUNUS, IQBAL
ZARQAWI, ABU MUSAB
ZOUAYDI, MUHAMMED GALEB KALAJE a/k/a Abu Talha

Defendants.
----------x

Plaintiffs, by their attorneys Kreindler & Kreindler, Barasch, McGarry Salzman Penson & Lim, Speiser, Krause, Nolan & Granito, Baumeister & Samuels, P.C., Law Firm of Aaron J. Broder & Jonathan C. Reiter and Jaroslawicz & Jaros, Esqs., as and for their Sixth Amended Consolidated Master Complaint, hereby allege:

1. Plaintiffs listed in the caption of this action are U.S. citizens, residents or foreign citizens who are or will be appointed either the Executors, Administrators or Personal Representatives of the Estates of persons killed, or are persons injured in the September 11, 2001 terrorist attacks perpetrated by some of the defendants with the support

and assistance of the other defendants, in which four United States' commercial aircraft were caused to crash into the World Trade Center Towers, the Pentagon and a field in Shanksville, Pennsylvania (hereinafter "September 11th Attacks") or representatives of property that was damaged in the attacks. Plaintiffs' decedents were passengers or crew members on board American Airlines Flights 11 and 77, United Airlines Flights 175 and 93, and persons present at both Towers of the World Trade Center in New York, or present at the Pentagon in Virginia and includes personal injury victims and those persons or entities who suffered property damage at those locations.

JURISDICTION AND VENUE

2. Jurisdiction arises pursuant to 28 U.S.C. §§ 1330(a) (actions against foreign states), 1331 (federal question), 1332(a)(2), 1350 ("Alien Tort Act"), 1605(a)(2), 1605(a)(5), 1605(a)(7) (the Foreign Sovereign Immunities Act), and the Torture Victim Protection Act, PL 102-256, 106 Stat. 73 (reprinted at 28 U.S.C.A. § 1350 note (West 1993)), and violation of the International Anti-Terrorism Act, 18 U.S.C. §2333.

3. Venue is proper in this district pursuant to the Air Transportation Safety and System Stabilization Act, (Pub. Law 107-42, 115 Stat. 230), 49 U.S.C. § 40101, Title IV, § 408(b)(3), designating the Southern District of New York ("S.D.N.Y.") as the exclusive venue for all civil litigation arising out of, or related to the September 11th Attacks, and 28 U.S.C. 1391(b)(2) and 1391(f)(1) because a substantial number of acts, occurrences, injuries and deaths occurred in the Southern District of New York.

4. This action for wrongful death, personal injury and related claims perpetrated by the foreign states of IRAQ, the SUDAN, and IRAN through their instrumentalities and their official and unofficial employees, agents and servants alleged herein, falls within the

exceptions to immunity under 28 U.S.C. §§ 1605(a)(5) and 1605(a)(7) (the Foreign Sovereign Immunities Act).

DEFENDANTS

5. Defendants are co-conspirators who intentionally, willfully and knowingly conspired, planned, financed, supported, executed and carried out a plan to murder, maim and injure United States' citizens, residents and others on September 11, 2001; and all participated directly or indirectly in the September 11, 2001 terrorist attacks on the United States of America. Defendants fall into three primary categories, (1) AL QAEDA and its members and associates, (2) IRAQ, the SUDAN and IRAN, State Sponsors of AL QAEDA's terrorist activities, and (3) entities or individuals who provided logistical, material, financial or other support to AL QAEDA and its terrorist activities.

6. Defendant AL QAEDA, a/k/a Islamic Army, is an unincorporated association organized to perpetrate acts of international terrorism, including murder, mayhem, bombings and hijackings against the United States, its citizens and its allies. AL QAEDA has also encouraged, financed and supported other terrorist groups who targeted U.S. citizens. AL QAEDA, as of September 11, 2001, was headquartered in Afghanistan, but has a network of terrorist cells and affiliated groups throughout the world.

7. Defendant OSAMA BIN LADEN a/k/a Usama Bin Laden, Abu Abdullah, Mujahid Shaykh Hajjs and Abdul Hay, ("BIN LADEN") was formerly a national of Saudi Arabia with Yemen as his ancestral home, but who is now an alien of unknown nationality. He is last known to have been living in Afghanistan. At all relevant times, BIN LADEN has headed and directed the terrorist activities of AL QAEDA.

8. Defendants OSAMA BIN LADEN, MUHAMMAD ATEF, AYMAN AL

Annex 21

***Peterson, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Memorandum Opinion (Damages), 7 September 2007, Case No. 1:01-cv-2094**

Excerpts: p. 1, & pp. 25-43

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), *et al.*,	
Plaintiffs,	
v.	**Consolidated Civil Actions: 01-2094 (RCL) 01-2684 (RCL)**
ISLAMIC REPUBLIC OF IRAN, *et al.*,	
Defendants.	

MEMORANDUM OPINION

BACKGROUND

These actions arise from the October 23, 1983, bombing of a United States Marine barracks in Beirut, Lebanon, in which 241 American servicemen operating under peacetime rules of engagement were murdered by a suicide bomber. This attack was regarded as the most deadly state-sponsored terrorist attack made against American citizens, until the tragic attacks on September 11, 2001.

The nearly one thousand plaintiffs in this consolidated action are many of the family members and estates of the 241 servicemen killed in the attack. Plaintiffs allege that the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") are liable for damages from the attack because they provided material support and assistance to

decedent, including adopted children and stepchildren, as well as the decedent's siblings, parents and any persons who were financially dependent upon the decedent at the time of his or her death. *See* W. Va. Code §§ 55-7-5, 55-7-6(b) (2007). Further, under West Virginia law, an individual qualifies as a "legal parent" if that individual is "defined as a parent, by law, on the basis of biological relationship, presumed biological relationship, legal adoption or other recognized grounds, [such as financial dependence]." W. Va. Code, § 48-1-232 (2007). In this case, the evidence shows that Russell Cyzick's birth mother married Richard Mason when Russell was nearly eighteen years old. There is no evidence that Russell was either legally adopted or financially dependent upon Richard Mason during what was left of his minor years. Accordingly, Richard Mason lacks standing to bring a claim because he is not a "legal parent" under West Virginia law. Therefore, this Court finds that Richard Mason's IIED claim must be DISMISSED.

5. Individuals with Valid Intentional Infliction of Emotional Distress Claims

Accordingly, the Court finds that the individuals listed in Appendix A to this opinion may bring intentional infliction of emotional distress claims. *See* Appendix A.

The Court will now turn its attention to damages for these IIED claims, as well as those claims for battery and wrongful death.

II. Damages

A. Damages Framework

The validity of each claim having been assessed, the Court can now turn to the respective amounts of damages associated with each valid claim before this Court. Under the FSIA, a "foreign state shall be liable in the same manner and to the same extent as a private individual

under like circumstances." 28 U.S.C. § 1606. Therefore, plaintiffs are entitled to the typical array of compensatory damages that may be awarded against tortfeasors in the plaintiffs' respective domiciliary states. "In determining the appropriate compensatory damages for each plaintiff's pain and suffering, this Court is guided not only by prior decisions awarding damages for pain and suffering, but also by those which awarded damages for solatium." *Haim*, 425 F. Supp. 2d at 71. This Court has previously looked to the nature of the relationship between the family member and the victim in order to help determine the amount of each award. *See Blais*, 459 F. Supp. 2d at 59-60; *Haim* 425 F. Supp. 2d at 75.[24] Parents of victims typically receive awards similar in amount to those awarded to children of the victim. *See generally Heiser*, 466 F. Supp. 2d at 271-356 (awarding children and parents of a terrorist attack decedents $5 million in pain and suffering damages). This award for parents and children of the decedents is typically smaller than the award for pain and suffering damages provided to spouses, but is larger than awards of pain and suffering damages to siblings. *See id.* (awarding spouses of decedents $8 million in pain and suffering damages, while awarding siblings to decedents $2.5 million). Moreover, "families of victims who have died are typically awarded greater damages than families of victims who remain alive." *Blais*, 459 F. Supp. 2d at 60 (quoting *Haim*, 425 F. Supp. 2d at 75).

This Court finds that the damages framework set forth in *Heiser* to be an appropriate

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[24] As noted previously, damages for pain and suffering have traditionally been available to those members of the decedent serviceman's near relatives, which consists of his or her immediate family. *See supra* Section I.C.2. "This Court defines one's immediate family as his spouse, parents, siblings, and children. This definition is consistent with the traditional understanding of one's immediate family." *Jenco*, 154 F. Supp. 2d at 36 n.8.

measure of damages for those family members of victims who died in this attack.[25] The Court finds that the framework detailed in *Blais* is appropriate to help determine damages for those surviving servicemen and their families seeking redress. *See Blais*, 459 F. Supp. 2d at 59.[26]

Accordingly, unless otherwise specifically addressed in Section B below, *see infra* Section II.B., the Court finds that the following damages amounts for pain and suffering shall be awarded to the plaintiffs who this Court deems to have standing to bring a valid cause of action. First, in terms of lost wages due the servicemen in this case, the Court hereby ADOPTS all of the financial calculations and recommendations made by the special masters as to lost wages.[27] Those calculations for lost wages shall be specified in Appendix B to this opinion. Second, unless otherwise specified in Section B below, the Court finds that the awards for pain and suffering to the servicemen are appropriate and hereby ADOPTS them. Third, the Court finds

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[25] In *Heiser*, family members of the servicemen who were killed in the 1996 Khobar Towers bombing brought various claims against the Islamic Republic of Iran, MOIS, and IRGC for their part in providing material financial and logistical support in bringing about the attack. *Heiser*, 466 F. Supp. 2d at 248-51. This Court awarded the valid claims brought by spouses of deceased servicemen $8 million in pain and suffering, parents and children of deceased servicemen $5 million, and siblings of deceased servicemen $2.5 million. *See generally Heiser*, 466 F. Supp. 2d at 271-356.

[26] As this Court stated in *Blais*:

> In cases that involve an attack where the victim survives, and where no captivity occurred, courts typically award a lump sum award based in large part on an assessment of the following factors: "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life."

Id.

[27] As mentioned above, *see supra* note 2, there are a few servicemen who have sought damages for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died. Those claims will be addressed in Section II.B.1, *infra*.

that the appropriate amount of pain and suffering damages for the spouse of a deceased serviceman to be $8 million. Fourth, the Court finds that the appropriate amount of pain and suffering damages for the parents and children of a deceased serviceman to be $5 million, per individual.[28] Fifth, the Court finds that the appropriate pain and suffering damages award for each sibling in this case to be $2.5 million, per sibling. Siblings of half-blood to the servicemen in this case are presumed to recover as a full-blood sibling would–that is, they are entitled to $2.5 million–unless the law of the state in which they were domiciled at the time of the attack states that they are not entitled to so recover.[29] Next, the Court finds that the appropriate amount of damages for family members of surviving servicemen are as follows: spouse ($4 million); parents ($2.5 million); children ($2.5 million); siblings ($1.25 million).[30] Unless otherwise specified below in Section B, to the extent that the special masters have awarded a plaintiff more or less than the aforementioned respective award amounts based upon the plaintiff's relation to the serviceman, those amounts shall be altered so as to conform with the respective award amounts set forth in this paragraph.

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[28] Each parent and child shall receive this amount. *See Heiser*, 466 F. Supp. 2d at 271-356.

[29] This Court will address the claims of those half-blood siblings whose award recommendations differ from the permissible awards under the respective state laws, *infra*. *See infra* Section II.B.3.

[30] The Court recognizes that the parents in *Blais* received $3.5 million for their IIED claims for pain and suffering damages associated with the aftermath of taking care of their son, who survived the attack on the Khobar Towers in 1996. *See Blais*, 459 F. Supp. 2d at 60. This exceptional award was given in light of the extremely severe and continuing nature of their son's maladies, and in light of the facts that their son was in a coma and vegetative state for a period of over five weeks. *Id.* at 59-60. Attention was also given to the fact that the parents in *Blais* gave up their jobs in order to take full-time care of their son. *Id.* at 60.

B. Special Damages Cases

1. Pain and Suffering Amount for Deceased Servicemen Who Initially Survived Attack

The personal representatives and estates of deceased servicemen Alvin Burton Belmer, Nathaniel Walter Jenkins, Luis J. Rotondo, Larry H. Simpson, Jr., and Stephen Tingley have each sought damages for pain and suffering incurred during the time at which they were alive after the attack and the time at which they died, in addition to the damages for lost wages and earnings arising out of their respective wrongful death claims. Several cases have awarded damages for the victim's pain and suffering that occurred between the attack and the victim's death shortly thereafter. *Haim*, 425 F. Supp. 2d at 71-72 (citing *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1, 8 (D.D.C.2000) (Lamberth, J.); *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 112-13 (D.D.C.2000) (Green, J.). When the victim endured extreme pain and suffering for a period of several hours or less, courts in these cases have rather uniformly awarded $1 million. *Haim*, 425 F.Supp.2d at 71-72. This award increases when the period of the victim's pain is longer. *Id.* at 72. In line with this precedent, this Court recently awarded $500,000 to a serviceman who survived a terrorist attack for 15 minutes, and was in conscious pain for 10 minutes.

The estate of Alvin Burton Belmer established before the special master that serviceman Belmer was alive and conscious for nearly eight days (7 days and 20 hours). The special master recommended an award of pain and suffering of $15 million. Though the Court recognizes Mr. Belmer was under excruciating pain during that period of time, it is not prepared to adopt such a recommendation. In light of his nearly eight days of pain and suffering, this Court finds that the

estate of Alvin Burton Belmer should be awarded $7.5 million in pain and suffering, in addition to the amount of lost wages he is awarded.

Similarly, the estate of Nathaniel Walter Jenkins established before a special master that serviceman Jenkins was alive for seven days after the attack. The special master recommended that Mr. Jenkins be awarded $7 million for pain and suffering undergone by Mr. Jenkins during this period of time. The Court finds this award amount is appropriate and finds that the estate of Nathaniel Walter Jenkins should be awarded $7 million in pain and suffering, in addition to the amount of lost wages he is awarded.

The estate of Luis J. Rotondo established before a special master that serviceman Rotondo was alive for six hours after the attack. The special master recommended a pain and suffering damages award of $250,000. In keeping with the precedent set forth in *Haim*, the Court finds that Luis J. Rotondo is entitled to $1 million in pain and suffering damages, in addition to the amount of lost wages he is awarded.

The estate of Larry H. Simpson, Jr. established before a special master that serviceman Simpson was alive for nine years after the attack, living with severe injuries throughout that time. The special master recommended an award of pain and suffering damages of $2 million. In light of the fact that Mr. Simpson was saddled with injuries from this attack that plagued him until his death, but conscious of the fact that Mr. Simpson appears to have led a somewhat functional life after the attack, the Court finds that Mr. Simpson should be awarded $5 million in pain and suffering, in addition to the amount of lost wages he is awarded.

The estate of Stephen Tingley established before a special master that serviceman Tingley was alive for a short but unknown amount of time. The special master recommended a pain and

suffering damages award of $1 million. Though the Court is certain that Mr. Tingley endured a great deal of pain during the minimal time he survived the attack, the Court is reluctant to grant such an award without any definitive proof of a duration of time that Mr. Tingley was alive. Therefore, this Court finds that Stephen Tingley is entitled to $500,000 in pain and suffering damages, in addition to the amount of lost wages he is awarded.

2. Pain and Suffering Amount for Surviving Servicemen

Each of the twenty six surviving servicemen have sought pain and suffering awards associated with their claims for battery. In awarding pain and suffering damages, the Court must take pains to ensure that individuals with similar injuries receive similar awards. Due to the large number of plaintiffs represented in this action, the Court needed to enlist the help of many different special masters to help calculate damages for each of the plaintiffs. Understandably, each special master calculated pain and suffering damages differently, which resulted in varying awards for varying maladies suffered by the surviving servicemen. Upon examination of the nature of the injuries of each of the servicemen, the Court makes the following findings about the pain and suffering damages for the twenty six surviving servicemen arising out of their respective battery claims:

- Marvin Albright suffered compound fracture of his right leg, injuries to the toes on his left foot, wounds and scars from shrapnel, in addition to lasting and severe psychological harm as a result of the attack. Therefore, this Court finds that he is entitled to $5 million in pain and suffering;
- Pablo Arroyo suffered a broken jaw, severe flesh wounds and scars on his arms, legs and face, a loss of teeth, and lasting and severe psychological harm as a result

of the attack. Therefore, this Court finds that he is entitled to $5 million in pain and suffering;

- Anthony Banks suffered as a result of this attack loss of sight in one eye, a perforated right eardrum resulting in some hearing loss, and a shrapnel injury to the back of his right thigh. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7.5 million in pain and suffering;
- Rodney Darrell Burnette was initially thought dead as a result of the attack, and was placed in a body bag, buried alive in the morgue for four days until someone heard him moaning in pain. His injuries from the attack include a closed head injury, a basilar skull fracture, a facial nerve palsy, rib injuries, a rupturing to the timpanic membrane in both ears, and injuries to both feet. He also suffered lasting and severe psychological problems from the attack. Accordingly, this Court finds that he is entitled to $8 million in pain and suffering;
- Glenn Dolphin suffered injuries in the back, arm and head from being hit with shrapnel from the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, the Court finds that he is entitled to $3 million in pain and suffering;
- Charles Frye was minimally injured from small arms fire occurring just after the initial bomb explosion, and has experienced resulting nerve pain and foot numbness. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $2 million in pain and

suffering, plus $200,000 in loss of earnings suffered;[31]

- Truman Dale Garner suffered as a result of the attack a shrapnel injury to the head, a subdural hematoma, a perforated right eardrum, crushed left ankle, collapsed left lung, and other shrapnel wounds that became infected. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7.5 million in pain and suffering damages;
- Larry Gerlach suffered severe injuries including a broken neck, which has resulted in permanent quadriplegia. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $12 million in pain and suffering damages;[32]
- Orval Hunt suffered skull fractures, brain bruising, various broken bones in his leg, and an exposed Achilles tendon as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $8 million in pain and suffering damages;
- Joseph P. Jacobs suffered a shoulder injury, and still suffers from neck, shoulder and back pain to this day. He also suffered lasting and severe psychological problems from the attack, and has admitted to having problems with alcohol abuse. Therefore, this Court finds that he is entitled to $5 million in pain and

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[31] Charles Frye admits that his physical injuries were minimal, and that he suffered severe psychological harm from the attack.

[32] *Cf. Mousa v. Islamic Republic of Iran*, 238 F. Supp. 2d 1, 12-13 (D.D.C. 2001) (Bryant, J.) (awarding $12 million to plaintiff with permanent and debilitating injuries, including complete deafness and blindness in one eye).

suffering damages;

- Brian Kirkpatrick suffered an eye injury, a perforated left ear drum, broken ribs, various shrapnel wounds, and the lining of his lungs were burned as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $8 million in pain and suffering damages;
- Burnham Matthews suffered a shrapnel wound in the forehead that destroyed the middle part of his nose, cuts to the head and back, and a perforated eardrum as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7 million in pain and suffering damages;
- Timothy Mitchell suffered lacerations to the back of his head, back injuries, and has resulting chronic back pain and headaches as a result of the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $3 million in pain and suffering damages, in addition to $1,555,099 in lost wages;
- Lovelle "Darrell" Moore suffered a torn ear, broken leg, damaged foot, and cuts from shrapnel from the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7 million in pain and suffering damages, in addition to $1,314,513 in lost wages;
- Jeffrey Nashton suffered a skull fracture, a shattered cheekbone, eyebrow and right eye orbit, crushed arms, a broken left leg, bruised right leg, two collapsed

lungs, burns on his arms and back, and internal bleeding. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $9 million in pain and suffering damages, in addition to $2,776,632 in lost wages;

- Paul Rivers suffered two broken eardrums, skin lacerations, burned skin, and knee damage from the attack. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7 million in pain and suffering damages;
- Stephen Russell suffered a broken femur, hand and pelvis bone, and was covered in cuts and bruises from the attack. His left foot was turned completely backwards. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7.5 million in pain and suffering damages, in addition to $1,752,749 in lost wages;
- Dana Spaulding suffered two broken clavicles, a broken middle ear which caused internal bleeding and continued vertigo, a punctured lung, bruised kidney, broken ribs, a severe laceration across his back, and a loss of his eyelashes. Moreover in the ten days after the attack, Dana was in a coma. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $8 million in pain and suffering damages, in addition to $1,559,609 in lost wages;
- Michael Toma suffered various cuts from shrapnel, internal bleeding in his urinary system, a deflated left lung, and a permanently damaged right ear drum.

He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $7.5 million in pain and suffering damages;

- Danny Wheeler suffered soft tissue damage to the chest and sternum area, flash burns, and lingering back problems, internal maladies and physical scarring. He also suffered lasting and severe psychological problems from the attack. Therefore, this Court finds that he is entitled to $5 million in pain and suffering damages.

In addition, Frank Comes Jr., Frederick Daniel Eaves, John Hlywiak, John Oliver, and Craig Joseph Swinson, and Thomas D. Young suffered no physical injuries, and are not required to do so to recover for IIED under North Carolina law. *See Dickens v. Puryear*, 276 S.E.2d 325, 332 (N.C. 1981). Still, each has demonstrated that he has suffered severe and lasting psychological harm, and may recover damages for that. Accordingly, the Court finds that each is entitled to $1.5 million in pain and suffering damages.[33]

3. Individual Family Member Cases

In certain instances, the special masters were presented with claims from individuals who were related by half-blood to a deceased serviceman in this case. This section addresses those claims under which the special master awarded the half-blood siblings an amount different than would be permissible under the laws of the half-blood siblings respective states of domicile at the time of the attack.

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[33] In addition to his award for pain and suffering, John Oliver is entitled to $1,777,542 in lost wages.

a. Richard J. Wallace

Under Oklahoma law, "[k]indred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come [sic] to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance." Okla. Stat. Ann. tit. 84, § 222 (2007). Stephen Eugene Spencer's half-brother, Richard J. Wallace, was awarded $1.25 million for pain and suffering arising out of his IIED claim. By contrast, Stephen's full-blooded brother, Douglas Spencer, was awarded $2.5 million. Richard J. Wallace did not come into this damages award as a result of descent, devise or a gift of one of his ancestors. Therefore, this disparity in awards is impermissible under Oklahoma law. Richard J. Wallace is entitled to the same amount as Douglas Spencer, his half-brother, and therefore should be awarded $2.5 million.

b. Hilton and Arlington Ferguson

Under Florida law, "[w]hen property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the half blood, those of the half blood shall inherit only half as much as those of the whole blood . . . ." Fla. Stat. Ann. § 732.105 (2007). Half blood siblings may recover a whole amount only "if all [remaining siblings] are of the half blood . . . ." Fla. Stat. Ann. § 732.105 (2007).

In this case, Hilton and Arlington Ferguson are half-brothers to serviceman Rodney J. Williams. Therefore, each may recover only half as much as Mr. Williams' full blood siblings, if there are any. If there are no full blood siblings, then Hilton and Arlington may recover whole amounts, each. Here, Mr. Williams is survived by two full blood siblings: Rhonda and Ronald Williams. Accordingly, though Hilton and Arlington Ferguson are entitled to recover for pain

and suffering under an IIED claim for the loss of their half-brother, they may only recover half the amount of damages as will be awarded to Rhonda and Ronald Williams. Therefore, Hilton and Arlington Ferguson may recover $1.25 million each because Rhonda and Ronald Williams are each entitled to recover $2.5 million for pain and suffering damages associated with the untimely loss of their brother.

c. Damien Briscoe and Kia Briscoe Jones

Under Maryland law, half-blood siblings are given the same status as full blood siblings of the same degree. Md. Code Ann., Estates & Trusts § 1-204 (2007). The special master charged with determining the appropriate amount of pain and suffering damages for relatives of serviceman Davin M. Green, however, recommended that Mr. Green's half-siblings Damien Briscoe and Kia Briscoe Jones be awarded $1.25 million for their pain and suffering associated with Mr. Green's death, while at the same time awarding Mr. Green's full blood siblings $2.5 million for pain and suffering.

This Court finds that this recommended disparity in award does not conform to the requirement that full blood and half blood siblings of the same degree be treated equally under the law. Accordingly, this Court finds that under Maryland law, Mr. Green's half-siblings are entitled to the same amount of recovery as their full blood sibling counterparts. This Court has typically found $2.5 million to be an appropriate level of pain and suffering damages under an IIED claim arising out of a terrorist attack. Accordingly, this Court adopts the special master's damages recommendation of $2.5 million for Mr. Green's full blood siblings, and finds that Mr. Green's half-siblings-Damien Briscoe and Kia Briscoe Jones-are also entitled to $2.5 million in pain and suffering damages in connection with their IIED claim against the defendants.

d. Darren Keown

Darren Keown is the half-brother of deceased serviceman Thomas Keown. Darren was domiciled in Tennessee at the time of the attack. It has long been recognized under Tennessee law that full and half-blood siblings may share equally in inheritance and intestate distribution. *Kyle v. Moore*, 35 Tenn. 183 (3 Sneed) (Tenn. 1855). The special master charged with determining the appropriate amount of pain and suffering damages for relatives of Thomas Keown recommended awarding Darren $4 million for pain and suffering, which was similar to the recommended award for Thomas' full-blooded brothers, Adam, Bobby Jr., and William, which was also $4 million. In light of the fact that full-blooded siblings in this case shall be awarded $2.5 million, however, the award for Adam, Bobby Jr., and William must be reduced to $2.5 million. Darren's award must be similarly lowered. Accordingly, this Court finds that the pain and suffering award for Darren Keown is $2.5 million.

e. Kenty Maitland & Alex Griffin

Kenty Maitland is the half-brother of Samuel Maitland, Jr. Alex Griffin is Samuel Maitland Jr.'s legally adopted brother. Both were domiciled in New York at the time of the attack. Under New York law, both half-blood siblings and adopted siblings are treated as equals to full-blooded siblings for purposes of inheritance and recovery. *See* N.Y. Est. Powers & Trusts § 4-1.1(b) (2007); N.Y. Dom. Rel. § 117 (2007). Accordingly both Kenty Maitland and Alex Griffin are entitled to recover in the same manner as Samuel's actual full-blooded siblings. The special master recommended that Kenty and Alex receive $1 million, each, for pain and suffering damages. Samuel's full-blood sister, Shirla Maitland, is entitled to recover $2.5 million in pain and suffering arising from her IIED claim against the defendants. Accordingly, this Court finds

that both Kenty Maitland and Alex Griffin are entitled to recover $2.5 million, each, in pain and suffering damages arising out of their respective IIED claims in this case.

f. Florene Martine Carter

Florene Martin Carter is the half-sister of deceased serviceman Charlie Robert Martin. Florene was domiciled in North Carolina at the time of the attack. Under North Carolina law, half-blood siblings may inherit and recover in the same manner as full-blood siblings. *Peel v. Corey*, 144 S.E. 559, 562 (N.C. 1928); *Univ. of North Carolina v. Markham*, 93 S.E. 845, 846 (N.C. 1917). Accordingly, Florene Martin Carter is entitled to recover in the same manner as Charlie's full-blooded siblings would have recovered. The special master recommended that Florene receive $1.25 million in pain and suffering damages. Charlie Robert Martin does not have full-blooded siblings. Still, siblings of deceased servicemen in this action are entitled to $2.5 million in pain and suffering damages arising out of their IIED claims against the defendants. Accordingly, the Court finds that Florene Martin Carter is entitled to $2.5 million in pain and suffering damages arising out of her IIED claim in this action.

g. Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, Mary Ellen Thompson

Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are also half-siblings of deceased serviceman Charlie Robert Martin. Each was domiciled in Georgia at the time of the attack. Under Georgia law, half-blood siblings inherit equally with whole-blood siblings. *Bacon v. Smith*, 474 S.E.2d 728, 731-32 (Ga. Ct. App. 1996). Accordingly, Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are entitled to recover in the same manner as Charlie's full-

blooded siblings would have recovered. The special master recommended that Linda, Corene, John, Gussie, and Mary Ellen each receive $1.25 million in pain and suffering damages. Charlie Robert Martin does not have full-blooded siblings. Still, siblings of deceased servicemen in this action are entitled to $2.5 million in pain and suffering damages arising out of their IIED claims against the defendants. Accordingly, the Court finds that Linda Martin Johnson, Corene Martin Jones, John Martin, Gussie Martin Williams, and Mary Ellen Thompson are entitled to $2.5 million in pain and suffering damages, each, arising out of their respective IIED claims in this action.

h. Sybil Caeser

Under Florida law, "[w]hen property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the half blood, those of the half blood shall inherit only half as much as those of the whole blood . . . ." Fla. Stat. Ann. § 732.105 (2007). Half blood siblings may recover a whole amount only "if all [remaining siblings] are of the half blood . . . ." Fla. Stat. Ann. § 732.105 (2007).

Here, Sybil Caeser is the half-sister of deceased serviceman Johnnie Caesar. Johnnie, however, has full-blooded siblings who have also survived him. Therefore, Sybil Caesar is entitled to one-half of what Johnnie's full-blooded siblings received. The full-blood siblings of Johnnie Caeser received $2.5 million. Therefore, this Court finds that Sybil Caeser is entitled to $1.25 million in pain and suffering damages arising out of her IIED claim in this action.

C. Punitive Damages

Punitive damages, however, are not available against foreign states such as the Islamic Republic of Iran. *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56, 71 (D.D.C. Mar. 24,

2006) (Lamberth, J.). Therefore, plaintiffs' claim for punitive damages against the Islamic Republic of Iran is DENIED. Moreover, this Court has previously found on a number of occasions that punitive damages are not available against MOIS because MOIS is a governmental entity, and part of the state of Iran itself. *Heiser*, 466 F. Supp. 2d at 270-71; *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 105 & n.1 (D.D.C. Aug. 10, 2006) (Lamberth, J.) (citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232-33 (D.C. Cir. 2003); *Haim*, 425 F. Supp. 2d at 71 n.2. Accordingly, plaintiffs' claim for punitive damages against defendant MOIS is also DENIED.

CONCLUSION

This Court is sadly aware that there is little it can do to heal the physical wounds and emotional scars suffered by the servicemen in this case and their family members. Though the attack on the Marine barracks in Beirut, Lebanon occurred nearly twenty four years ago from this date, it is clear from the testimony presented to this Court and the special masters that the intense suffering experienced on that day has had a tragically lasting effect on the plaintiffs who have brought this action. The fact that almost 1000 individuals sought redress in this action confirms the sheer number of individuals whose lives were forever altered as a result of this senseless attack on these courageous servicemen.

Indeed, at a time like this and an era such as ours, it is important to acknowledge the selfless courage that these–and all–servicemen demonstrated by choosing to take action and make this world a safer and better place in which to live. The fact that the servicemen in this action made the ultimate sacrifice to pursue such a noble cause only serves to further establish the legacy of these courageous individuals in the annals of history.

Not to be forgotten is the courage demonstrated by the family members who have come forth in bringing this claim. These individuals, whose hearts and souls were forever broken on October 23, 1983, have waited patiently for nearly a quarter of a century for justice to be done, and to be made whole again. And though this Court can neither bring back the husbands, sons, fathers and brothers who were lost in this heinous display of violence, nor undo the tragic events of that day, the law offers a meager attempt to make the surviving family members whole, through seeking monetary damages against those who perpetrated this heinous attack. The Court hopes that this extremely sizeable judgment will serve to aid in the healing process for these plaintiffs, and simultaneously sound an alarm to the defendants that their unlawful attacks on our citizens will not be tolerated.

A separate Order and Judgment consistent with these findings shall issue this date.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, September 7, 2007.

Annex 22

***Levin, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the District of Columbia, Clerk's Judgment, 6 February 2008, Case No. 05-2494**

A0450 (Rev. - DC 04/00) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JEREMY LEVIN, et al

V.

ISLAMIC REPUBLIC OF IRAN, et al

JUDGMENT IN A CIVIL CASE

Case Number: 05-2494

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☑ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that final judgment is hereby entered on behalf of Plaintiff Jeremy Levin and against Defendants the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information and Security ("MOIS"), and the Iranian Islamic Revolutionary Guard Corp ("IRGC"), jointly and severally, in the amount of $18,506,935; and on behalf of Plaintiff Dr. Lucille Levin and against Defendants Iran, MOIS, and IRGC, jointly and severally, in the amount of $10,300,784.

Dated: February 6, 2008

NANCY MAYER-WHITTINGTON, Clerk

By: Sonya I. Hightower
Deputy Clerk

Annex 23

***Rubin, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the District of Columbia, Memorandum Order,3 June 2008, Case No. 1:01-cv-01655**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNY RUBIN *et al.*,	:		
	:		
Plaintiffs,	:	Civil Action No.:	01-1655 (RMU)
	:		
v.	:	Document Nos.:	64, 76
	:		
THE ISLAMIC REPUBLIC OF IRAN *et al.*,	:		
	:		
Defendants,	:		
	:		
and	:		
	:		
THE UNITED STATES OF AMERICA	:		
	:		
Intervenor.	:		

MEMORANDUM ORDER

GRANTING THE GOVERNMENT'S MOTION TO VACATE THE PLAINTIFFS' WRITS OF ATTACHMENT AND EXECUTION AND THE COURT'S OPINION AND ORDER OF MARCH 23, 2005; GRANTING THE PLAINTIFFS' MOTION PURSUANT TO THE DEFENSE AUTHORIZATION ACT

I. INTRODUCTION

In the final chapter of this seven-year litigious saga, the government brings a motion to vacate the plaintiffs' writs of attachment and execution and to vacate the court's memorandum opinion and order of March 23, 2005. In that memorandum opinion and accompanying order this court granted the plaintiffs' motion for a writ of execution against two bank accounts[1] belonging to the defendants.[2] The government appealed that ruling, but on appeal the parties

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[1] After the Clerk of the Court entered default judgment against the defendants on March 6, 2002, the court conducted several evidentiary hearings and issued a Findings of Fact and Conclusions of Law and an Order and Judgment on September 10, 2003 awarding the plaintiffs $71.5 million for injuries suffered as a result of a terrorist attack in Jerusalem in 1997.

[2] The defendants are the Islamic Republic of Iran, the Iranian Ministry of Information and Security, as well as senior Iranian officials.

filed a Joint Motion to Vacate the Writs of Attachment and Execution, to Vacate this Court's Order as Moot, and to Dismiss the Appeal as Moot. Gov't's Mot., Ex. A ("Joint Motion"). In the Joint Motion, the plaintiffs indicated that they "are no longer interested in litigating this matter and are willing to relinquish all claims to the two consular bank accounts." Joint Motion at 3. Accordingly, this Circuit dismissed as moot the government's appeal and remanded the case to this court to "consider the motion for vacatur as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)." Mandate (Sept. 7, 2005). Because the plaintiffs urge the court "to implement the terms of the Joint Motion as directed by the [mandate]," Pls.' Opp'n at 4, it is clear that the parties do not dispute (1) vacating the plaintiffs' writs of attachment and execution or (2) vacating this Court's March 23, 2005 order. Rather the plaintiffs' only dispute – and, therefore, the only issue before the court – is whether to vacate the memorandum opinion filed contemporaneously with the March 23, 2005 order.[3]

II. ANALYSIS

A. The Government's Request is Properly Before the Court

The plaintiffs first contend that the court should deny the government's request because it violates the express directive of the Court of Appeals." Pls.' Opp'n at 4. But the plaintiffs later soften their critique, asserting that the mandate, "by necessary implication" prevents the government from filing a motion that differs from the terms in their Joint Motion filed with the

[3] On remand, the plaintiffs filed a motion pursuant to the National Defense Authorization Act for Fiscal Year 2008 ("Defense Authorization Act"), Pub. L. No. 110-181, § 1083. Pls.' DAA Mot. Because the instant case (1) was brought under and relied upon 28 U.S.C. § 1605(a)(7) and the Flatow Amendment; (2) has been adversely affected because both provisions fail to create a cause of action; and (3) is currently pending before the court on a Rule 60(b) motion, the court grants the plaintiffs' motion, giving "effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code." Defense Authorization Act, Pub. L. No. 110-181, § 1083(c)(2)(A).

Circuit. Pl.'s Supp. Opp'n at 2. In its mandate, the Circuit ordered "that the case be remanded to the district court with instructions to consider the motion for vacatur as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)." Mandate (Sept. 7, 2005). Because vacating the memorandum opinion was never squarely before the Circuit, the mandate, as the government points out, does not preclude this court from addressing whether the memorandum opinion in addition to the order issued March 23, 2005 should be vacated. Gov't's Supp. Mot. at 5-9; *Indep. Petroleum Ass'n of Am. v. Babbitt*, 235 F.3d 588, 597 (D.C. Cir. 2001) (concluding that "the District Court stood on firm ground" in considering an issue that was not "cleanly raised" in an earlier appeal); *Cleveland v. Fed. Powers Comm'n*, 561 F.2d 344, 348 (D.C. Cir. 1974) (holding that "[t]he mandate rule . . . is a specific application of the doctrine commonly known as the law of the case . . . and does not apply to points not decided on a previous appeal, even though they then could have been"). Indeed, once the Circuit issues its mandate the district court regains jurisdiction over the case. *See United States v. DeFries*, 129 F.3d 1293, 1302 (D.C. Cir. 1997). Consequently, the government's request that the court vacate its memorandum opinion issued March 23, 2005 is properly before the court.

B. The Court Grants the Government's Request to Vacate the Memorandum Opinion Issued March 23, 2005

1. Legal Standard for Vacatur of a Memorandum Opinion

Federal Rule of Civil Procedure 60(b) states that a court, in its discretion, may grant relief from a judgment for "any . . . reason that justifies relief." FED. R. CIV. P. 60(b)(6). Mootness provides such a reason, and "[w]hether any opinion should be vacated on the basis of mootness is an equitable question." *St. Lawrence Seaway Pilots' Ass'n v. Collins*, 2005 WL 1138916, at *1 (D.D.C. May 13, 2005) (quoting *Coalition for Gov't Procurement v. Fed. Indus., Inc.*, 365 F.3d 435, 484 (6th Cir. 2004)). "Of prime consideration . . . 'is whether the party seeking relief

from the judgment below caused the mootness by voluntary action . . . .'" *N. Cal. Power Agency v. Nuclear Regulatory Comm'n*, 393 F.3d 223, 225 (D.C. Cir. 2004) (quoting *United States Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24 (1994)). "[I]f the party who lost below did not cause the case to become moot, that is, if happenstance or the actions of the prevailing party ended the controversy, vacatur remains the standard form of relief." *Id.* (internal citations omitted).

2. The Plaintiffs Voluntarily Abandoned Their Claims

The government argues that vacatur must be granted because the plaintiffs unilaterally abandoned their claims, rendering this court's earlier decision unreviewable. Gov't's Mot. at 5. The plaintiffs retort that the Joint Motion was not a unilateral action but a stipulation whereby the government relinquished its right to appeal this court's memorandum opinion and its right to request that this court vacate the memorandum opinion, and the plaintiffs agreed not to oppose vacatur of their writs of attachment, execution and the order issued March 23, 2005. Pls.' Opp'n at 5; Pls.' Sur-reply at 3. This agreement was finalized, the plaintiffs assert, upon the filing of the Joint Motion with the Circuit. *Id.* Therefore, the plaintiffs conclude that the government is "legally and equitably estopped from seeking to breach and change the terms of the Joint Motion." Pls.' Opp'n at 6.

The plaintiffs' theory, however, does not comport with the facts in the record. After the issuance of the mandate, on December 5, 2005, the plaintiffs stated in an e-mail to the government: "Adding to [the] complexity of the mix is the fact that the government never requested and Rubin plaintiffs never agreed to vacatur of the underlying memorandum opinion." Gov't's Reply, Ex. B. This statement belies the plaintiffs' assertion that the failure to mention the memorandum opinion in the parties' Joint Motion was a deliberate act pursuant to a pre-

existing agreement. Moreover, the plaintiffs' theory is contrary to their unilateral concession on June 3, 2005, that "their own execution proceedings in respect to these accounts – and almost certainly the United States' appeal thereof – are moot/unripe." Pls.' Response to Gov't's Em. Mot. for Stay (June 3, 2005) at 2. Thus, the court concludes that the plaintiffs voluntarily rendered their claims moot.

The plaintiffs' final argument is that the court should not vacate the memorandum opinion because "there is a powerful public interest in the continued validity of that Opinion," Pls.' Opp'n at 8, in that it "is one of the few decisions interpreting § 201 of the Terrorism Risk Insurance Act ('TRIA') which permits enforcement proceedings against the blocked assets of state sponsors of terrorism such as Iran," *id.* at 2-3. This would presumably aid the plaintiffs in their quest to use the memorandum opinion to "seek turnover" of the accounts because, absent vacatur, their "underlying entitlement to the account would therefore seem to be res judicata." Gov't's Reply, Ex. B.

Using the memorandum opinion for its precedential value or to "seek turnover" of the accounts runs contrary to the underlying purpose of vacatur outlined by the Supreme Court in *United States v. Munsingwear Inc.*, 340 U.S. 36 (1950). That is, vacatur should be utilized "to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *Id.* at 41. Therefore, the plaintiffs' bases for requesting that the court leave its memorandum opinion untouched while vacating the order are otiose.

Accordingly, it is this 2nd day of June, 2008,

ORDERED that the plaintiffs' motion pursuant to the Defense Authorization Act is **GRANTED**; and it is

FURTHER ORDERED that the government's motion to vacate is hereby **GRANTED**; and it is

ORDERED that the writs of attachment and execution against the two accounts at Bank of America identified in these proceedings as the Third and Fourth Accounts are hereby **DISSOLVED**; and it is

FURTHER ORDERED that the order and memorandum opinion issued March 23, 2005 are hereby **VACATED**.

SO ORDERED.

RICARDO M. URBINA
United States District Judge

Annex 24

***Beer, et al. v. The Islamic Republic of Iran, et al.,* U.S. District Court for the District of Columbia, Findings of Fact and Conclusions of Law (Liability and Damages), 26 August 2008, Case No. 06-473**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANNA BEER, *et al.*,	
Plaintiffs,	
v.	
THE ISLAMIC REPUBLIC OF IRAN, *et al.*,	**Civil Action No. 06-473 (RCL)**
Defendants.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action arises from the June 11, 2003 suicide bombing of a bus in Jerusalem, Israel. Plaintiffs are the mother, brother, and sisters of Alan Beer, who was killed in the attack. Plaintiffs allege that the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") are liable for damages resulting from the attack because they provided material support and assistance to Hamas, the terrorist organization that orchestrated the bombing. As such, defendants are subject to suit under the terrorist exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605(a)(7).[1]

[1] The recently enacted National Defense Authorization Act for Fiscal Year 2008 ("NDAA"), Pub. L. No. 110-181, 122 Stat. 3, § 1083, revised the terrorism exception to sovereign immunity by repealing § 1605(a)(7) of Title 28 and replacing it with a separate section, § 1605A. Section 1605A creates a private, federal cause of action against a foreign state that is or was a state sponsor of terrorism, and provides for economic damages, solatium, pain and suffering, and punitive damages.

Plaintiffs mistakenly assert that § 1605A has automatic, retroactive application to any action previously brought under § 1605(a)(7) within the prescribed time limit. Rather, to benefit from § 1605A, a plaintiff in an action pending under § 1605(a)(7) must, within 60 days from the date of the NDAA's enactment, either (1) refile the action; or (2) file a motion for an order giving effect to the action as if it had originally been filed under § 1605A. *See* Section 1083(c)(2)(A) (setting forth the conditions upon which a pending action may be given effect as if originally

On March 14, 2006, plaintiffs filed their Complaint under the FSIA seeking redress for their losses. On November 14, 2006, this Court ordered service upon defendants through diplomatic channels in accordance with 28 U.S.C. § 1608(a)(4). On June 20, 2007, plaintiffs filed proof of service in compliance with statutory procedures and thereafter sought entry of default on October 12, 2007, based upon defendants' failure to respond or enter an appearance. Default was entered by the Clerk of this Court against both defendants Iran and MOIS on October 15, 2007.

Plaintiffs' liability and damages claims are supported by the evidence presented in the January 31, 2008 hearing on liability. Based on all of the evidence presented, the Court makes the following findings of fact and conclusions of law and will, consistent with them, enter default judgment in favor of plaintiffs and against defendants Iran and MOIS.

FINDINGS OF FACT

I. Generally

1. Plaintiff Harry Beer is an American citizen born and domiciled in Ohio. (*See* Hr'g Tr. 31, 64, Jan. 31, 2008.) He is the brother of Alan Beer and appears as a plaintiff in his own capacity and as administrator of his late brother's estate. (Compl. ¶ 1.)

2. Decedent Alan Beer is an American citizen born on December 15, 1956, in Cleveland, Ohio. (*See* Hr'g Tr. 32, 35.) At the time of his death, he was domiciled in Ohio. (*See id.* at 38; Ex. 11.)

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filed under § 1605A); section 1083(c)(2)(C) (providing the time limitations for plaintiffs to file a motion or refile an action under subparagraph (A)). Where, as here, plaintiffs in a case pending under § 1605(a)(7) fail to properly assert a cause of action under § 1605A within the 60-day limit, the court will retain jurisdiction under § 1605(a)(7). *See Simon v. Republic of Iraq*, 529 F.3d 1187, 1192 (D.C. Cir. 2008) (holding that courts retain jurisdiction over cases pending pursuant to § 1605(a)(7) when Congress enacted the NDAA).

3. Plaintiff Anna Beer is the mother of decedent Alan Beer. She is a naturalized American citizen who was domiciled in Ohio at the time of her son's death. (*Id.* at 62, 64.)

4. Plaintiff Phyllis Maisel was born in Cleveland, Ohio. (*See id.* at 32.) She is an American citizen who was living in Israel at the time of her brother's death. (*See id.* at 83–84.) She was last domiciled in Ohio. (*See id.* at 32–33.)

5. Plaintiff Estelle Carroll was born in Cleveland, Ohio. (*See id.* at 32.) She is an American citizen who was domiciled in Norfolk, Virginia at the time of her brother's death. (*See id.* at 53.)

6. Alan Beer was the youngest of four children. He grew up in a close, religious family in Cleveland, Ohio. After graduating from high school, Alan began to visit Israel, where his older sister Phyllis Maisel resided. (*See id.* at 77.) Alan developed a career in information technology, working in various locations throughout the U.S. (*See id.* at 34–35.)

7. Alan traveled between the U.S. and Israel regularly. At one point, he resided in Israel for approximately fours years and then returned to the U.S. to pursue career opportunities and to be with his mother. (*See id.* at 83.) Alan worked in the U.S. for a short period, then returned to Israel for the final time six months prior to his death. (*See id.*)

8. Alan's family was well aware of the frequency of terrorist attacks in Israel. (*See id.* at 52, 65, 84–85.) Terrorist attacks were so frequent that Phyllis Maisel became the point of contact for all of the family members living in the U.S. to make sure that all family members in Israel were safe after an attack. (*See id.* at 42.)

II. The June 11, 2003 Bombing

9. On June 11, 2003, a Hamas suicide bomber blew up Egged bus number 14A. (*See* Clawson Dep. 35:10–36:20, May 24, 2006; *see also* U.S. Dep't of State, 2003 Patterns of Global

Terrorism, app. A at 12.) One of the deadliest attacks of the year, the explosion killed 17 people, including Alan Beer, and wounded more than 99. *See* 2003 Patterns of Global Terrorism, app. A at 12. Hamas claimed responsibility for the bombing as retaliation after the Israelis attempted assassination of a senior Hamas leader. (Clawson Dep. 36:4–10.)

III. Iranian Support and Sponsorship of the Attack

10. Defendant Iran "is a foreign state and has been designated a state sponsor of terrorism pursuant to section 6(j) of the Export Administration Act of 1979 (50 App. U.S.C.A. § 2405(j)) continuously since January 19, 1984." *Flatow v. Islamic Republic of Iran*, 999. F. Supp. 1, 9, ¶ 19 (D.D.C. 1998) (Lamberth, J.).

11. Hamas is an organization supported by Iran, "dedicated to the waging of Jihad, or a holy war employing terrorism with the object of seizing the leadership of the Palestinian people and asserting sovereignty and the rule of the Muslim religion over all of Palestine, including all territory of the State of Israel." *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 79, ¶ 10 (D.D.C. 2006) (Lamberth, J.) (quoting *Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13, 19, ¶ 24 (D.D.C. 2002) (Lamberth, J.)).

12. Defendant Iran actively provided material support to Hamas at the time of the June 11, 2003 suicide bombing of Egged bus 14A. (Clawson Dep. 39:9–17.) Iran remained the most active state sponsor of terrorism in 2003. (2003 Patterns of Global Terrorism 88.) During that period, "Iran maintained a high-profile role in encouraging anti-Israeli activity" while providing Hamas and other terrorist organizations with funding, safe haven, training, and weapons. (*See id.*) Iran hosted a conference in August 2003 on the Palestinian *intifadah,* at which an Iranian official suggested that the continued success of the Palestinian resistance depended on suicide

operations. (*Id.*)

13. Pesach Dov Maisel ("Dov Maisel"), the son of Plaintiff Phyllis Maisel and nephew of Alan Beer, began working for Israeli Emergency Medical Services ("EMS") at the age of fourteen. (Hr'g Tr. 13.) He has responded to most of the terrorist attacks in greater Jerusalem since 2000. (*Id.* at 15.) Dov Maisel was contacted on his beeper on June 11, 2003, to respond to a bus bombing. (*Id.* at 17.) Upon arrival at the scene of the bombing, he was not aware that his uncle, Alan Beer, had been on the bus. (*Id.* at 20.)

14. Dov Maisel described in detail the debriefing procedure undertaken by the medical personnel who responded to the scene of the June 11, 2003 bus bombing. (*Id.* at 22-24.) During the debriefing, a doctor described one of the victims he treated at the scene. According to the doctor, the man was conscious after the bombing but had extensive shrapnel wounds. This man was conscious when the response team did the first survey of the victims, but he had suffered severe trauma and was experiencing shortness of breath. By the time the medics brought him to the ambulances to be transported to the hospital, he was dead. (*Id.* at 24–25.) The day after the bombing, pictures of those killed were in the papers. The same doctor approached Dov Maisel at Alan Beers' funeral and told him that Alan was the victim in the doctor's description. (*Id.* at 24.)

IV. Family Members of Decedent Alan Beer

15. Harry Beer was the first family member to learn of Alan Beer's death. (*Id.* at 42-44.) A friend of Alan's, who was with him shortly before Alan boarded the Egged bus 14A, heard that a bus had been bombed and went to the scene to see if it was the same bus. When he realized that Alan was killed in the bombing, he called Harry Beer to inform him of his brother's death. (*Id.* at 43.) Harry Beer had the difficult task of calling his sister Phyllis Maisel, to give her the tragic

news that Alan had been killed. (*Id.* at 44.) Afterward, he and his wife drove to his mother's home to inform her that her youngest son was dead. (*Id.* at 44–45.)

16. Anna Beer had been watching CNN and saw coverage of the bus bombing. (*Id.* at 66–67.) While watching the CNN coverage, she thought to herself, "[O]h my God, these families. What a terrible tragedy." It was then that her son Harry Beer arrived and informed her that she "was part of the tragedy." (*Id.* at 67.)

17. Phyllis Maisel, who lived in Israel at the time, also saw coverage of the bus bombing on television. (*See id.* at 85.) The next morning she received a call from Harry Beer informing her that Alan had been on that bus and was dead. She became so emotional that she could not talk anymore and gave the phone to her husband. (*See id.* at 88–89). When her son, Dov Maisel, saw her the next day, she was totally broken down and crying. (*See id.* at 27).

18. Estelle Carroll was well aware of the frequency of terrorist attacks in Israel. Upon hearing of an attack, she usually waited for a phone call indicating that everyone in the family was safe. (*See id.* at 52.) After the June 11, 2003 attack, she received a visit from the community rabbi who informed her that Alan had been killed in the recent bus bombing in Israel. She called her brother, Harry Beer, and begged him to tell her it was not true. Upon receiving confirmation that Alan had been killed, she became emotionally upset and began ripping at her clothes. (*See id.* at 53–54.)

19. Harry Beer and his mother Anna Beer immediately flew to Israel for Alan's funeral. (*See id.* at 45.) Anna Beer was so exhausted from the trip and upset by the death of her son that she required the use of a wheelchair for the first time. (*See id.* at 54.)

20. The entire family observed the Jewish period of mourning, sitting *shiva*, at Phyllis Maisel's house. Close to one thousand people came to the Maisel home. (*See id.* at 92.)

21. Alan Beer was a volunteer in the community and was taking the bus home after having made a *shiva* visit to a friend whose father had died. (*See id.* at 42.) His family inscribed a Hebrew quotation on his gravestone which, when translated, says that "he is a person that is always happy to meet people and greet them with happiness when he meets anyone." (*See id.* at 29.)

22. Harry Beer, Alan's older brother, recalled fond memories of their childhood. (*Id.* at 33) He described his brother as someone special who touched a lot of people. He recounted memories of his brother's relationship with his children who fondly called him "Uncle Dude." (*Id.* at 47.)

23. Estelle Carroll, one of Alan's older sisters, thought of him as her first baby since she was old enough to take care of him when he was born and he was close enough in age to her own son that he became somewhat of a big brother to him. (*See id.* at 49.) She explained that nothing can fill the hole cause by Alan's death. (*See id.* at 51.)

24. Phyllis Maisel is Alan's other older sister. She recalled that when Alan entered kindergarten at the same school she attended, she became responsible for getting him to and from school. (*See id.* at 75). Following Alan's death, she attended grief counseling for two-and-a-half years to help her cope with the loss. (*Id.* at 93–94.)

25. Anna Beer, Alan's mother, described her son as "sunshine;" a "blessed child;" someone who was "always smiling." (*Id.* at 65.) Anna Beer inscribed the phrase, "He was a gift from God," on Alan's gravestone to signify the pleasant unexpectedness of learning that she was

pregnant with him after she no longer expected to have any more children. (*See id.* at 68.) She has saved many mementos of her son, including a picture Alan painted that now hangs prominently in the living room of her home. (*See id.* at 69–70; Ex. 10A–C.)

CONCLUSIONS OF LAW

I. Legal Standard for FSIA Default Judgment

Under the Foreign Sovereign Immunities Act, no judgment by default shall be entered by a court unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. 28 U.S.C. § 1608(e); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C. Cir. 2003), *cert. denied*, 542 U.S. 915 (2004). In FSIA default judgment proceedings, plaintiffs may establish proof by affidavit. *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 268 (D.D.C. 2003) (Urbina, J.). Upon evaluation, the court may accept plaintiffs' uncontroverted evidence as true. *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 255 (D.D.C. 2006) (Lamberth, J.) (citing *Campuzano*, 281 F. Supp. 2d at 268). This Court accepts the uncontested evidence and sworn testimony submitted by plaintiffs as true in light of defendants' failure to object or enter an appearance to contest the matters in this case.

II. Jurisdiction

The Foreign Sovereign Immunities Act is the sole basis for jurisdiction over foreign sovereigns in the United States. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). The "state-sponsored terrorism" exception provides that a foreign sovereign will not be immune to suit in U.S. courts where:

> money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such

> act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

28 U.S.C. § 1605(a)(7).

In order to subject a foreign sovereign to suit under 28 U.S.C. § 1605(a)(7), plaintiffs must demonstrate that (1) the foreign sovereign was designated by the State Department as a "state sponsor of terrorism;" (2) the victim or claimant was a U.S. national at the time the acts took place; and (3) the foreign sovereign engaged in conduct that falls within the ambit of the statute. *Heiser*, 466 F. Supp. 2d at 254.

Each of the requirements is met in this case. First, defendant Iran has been designated a state sponsor of terrorism continuously since January 19, 1984, and was so designated at the time of the attack. *See* 31 C.F.R. § 596.201 (2001); *Flatow*, 999 F. Supp. 1, 11 (D.D.C. 1998) (Lamberth, J.). Second, each of the plaintiffs in this action was a United States national at the time the bombing occurred. Finally, as to the third element, defendant Iran knowingly provided material support to Hamas, the entity that committed the attack. As such, Iran's support of Hamas falls squarely within the ambit of the statute. Defendant MOIS is treated as the state of Iran itself rather than its agent, *Roeder*, 333 F.3d at 234, and thus the same determinations apply to its conduct.

The FSIA provides that personal jurisdiction over a non-immune foreign sovereign exists where service of process has been accomplished pursuant to 28 U.S.C. § 1608. *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 298 (D.D.C. 2003) (Lamberth, J.). Since service has been effected and plaintiffs have established an exception to immunity pursuant to § 1605(a)(7), this Court has *in personam* jurisdiction over defendants Iran and MOIS.

III. Liability

A. Proper Causes of Action Under the FSIA

Section 1605(a)(7) is "merely a jurisdiction-conferring provision that does not otherwise provide a cause of action against either a foreign state or its agents." *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1032 (D.C. Cir. 2004). Once a foreign state's immunity has been lifted under § 1605 and jurisdiction is proper, § 1606 provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Section 1606 acts as a "pass-through" to substantive causes of action against private individuals that may exist in federal, state or international law. *See Dammarell v. Islamic Republic of Iran*, Civ. A. No. 01-2224, 2005 WL 756090, at *8–10 (D.D.C. Mar. 29, 2005) (Bates, J.).

In this case, state law provides a basis for liability. First, the law of the United States applies rather than the law of the place of the tort or any other foreign law. This is because the United States has a "unique interest" in having its domestic law apply in cases involving terrorist attacks on United States citizens. *Id.* at *20.

This Court must next determine which state's law to apply. As the forum state, District of Columbia choice of law rules guide the Court's analysis. Under District of Columbia choice of law rules, courts employ a refined government interest analysis under which courts "evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review." *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 41 (D.C. 1989) (citations and internal quotations omitted). This test typically leads to the application of the law of plaintiff's domicile,

as the state with the greatest interest in providing redress to its citizens. *See Dammarell*, 2005 WL 756090, at *20–21.

In the instant action, Estelle Carroll was domiciled in Virginia at the time of the attack, and the remaining plaintiffs were domiciled in Ohio. Accordingly, plaintiffs' claims shall be governed by Virginia and Ohio laws. As required by § 1606 of the FSIA, both states' laws provide a cause of action against private individuals for the kinds of acts alleged against defendants in this case. Therefore, this Court's next task is to determine whether plaintiffs have demonstrated defendants' liability and their right to damages under Ohio and Virginia law.

B. Vicarious Liability

The basis of defendants' liability is that they provided material support and resources to Hamas, which completed the June 11, 2003 attack. One may be liable for the acts of another under theories of vicarious liability, such as conspiracy, aiding and abetting, and inducement. This Court finds that civil conspiracy provides a basis of liability for defendants Iran and MOIS and accordingly declines to reach the issue of whether they might also be liable on the basis of aiding and abetting and/or inducement.

Civil conspiracy under Ohio law is the "malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages." *Heiser*, 466 F. Supp. 2d at 267 (quoting *Matthews v. New Century Mortg. Corp.*, 185 F. Supp. 2d 874 (S.D. Ohio 2002)).

Civil conspiracy under Virginia law "is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose." *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 55 (D.D.C. 2006) (Lamberth, J.) (quoting *Hechler Chevrolet, Inc. v.*

General Motors Corp., 337 S.E.2d 744, 748 (Va. 1985)). In Virginia, the basis for an action of civil conspiracy "is the wrong which is done under the conspiracy and which results in damage to the plaintiff." *Id.* (quoting *Gallop v. Sharp*, 19 S.E.2d 84, 86 (Va. 1942)).

As this Court has previously held, "[s]ponsorship of terrorist activities inherently involves a conspiracy to commit terrorist attacks." *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 84 (D.D.C. 2006) (Lamberth, J.) (quoting *Flatow*, 999 F. Supp. at 27). Here, it has been established by evidence satisfactory to this Court that Iran has continuously provided material support in the form of, *inter alia*, funding, training, and safe haven to Hamas and its members so that they may undertake terrorist attacks like the one in this action. It is undisputed that Alan Beer's death was caused by a willful and deliberate act of extrajudicial killing perpetrated by Hamas in furtherance of the terrorist jihad goals shared by Hamas and defendants. Finally, as will be discussed below, the plaintiffs in this action incurred damages resulting from the death and injuries caused by the conspiracy. Accordingly, the elements of civil conspiracy are established between Hamas and defendants Iran and MOIS.

1. Wrongful Death

Under Ohio's wrongful death statute, a civil action may be brought "in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, . . . [as well as] the other next of kin of the decedent." *Heiser*, 466 F. Supp. 2d at 337 (quoting Ohio Rev. Code. Ann. § 2125.02(A)(1)). A decedent's next of kin may include the decedent's siblings. *Id.* (quoting *Karr v. Sixt*, 67 N.E.2d 331, 335 (Ohio 1946)). Available compensatory damages for a wrongful death action include pecuniary damages, loss of support, services, society and prospective inheritance, as well as pain and

suffering incurred by the bereaved plaintiff. *Id.* The surviving spouse, children, and parents of the decedent, if any, are "rebuttably presumed to have suffered damages by reason of the wrongful death." *Id.* (quoting Ohio Rev. Code. Ann. § 2125.02(A)(1)). Alan Beer's estate is represented by his brother, Harry Beer. Alan's estate has asserted a claim under Ohio's wrongful death statute because he was last domiciled in Ohio. Under Ohio law, any recovery under this wrongful death action is for the benefit of his mother, Anna Beer, and his siblings, who have proven that they suffered damages resulting from Alan's death.

In light of the evidence presented, the estate of Alan Beer has made out a valid claim of wrongful death under Ohio law. As set forth above, defendants are vicariously liable for the suicide attack that took the lives of 17 innocent civilians, including Alan Beer.

2. Conscious Pain and Suffering

Ohio law provides that an action for injury to the person or property of a deceased may be brought notwithstanding his death. *See* Ohio Rev. Code Ann. § 2305.21; *see also Monnin v. Fifth Third Bank of Miami Valley*, 658 N.E.2d 1140, 1149 (Ohio Ct. App. 1995). In order to maintain that claim, there must be some evidence of conscious pain and suffering by the decedent between the injury inflicted and his resulting death. *See Monnin*, 658 N.E.2d at 1149.

Based upon the evidence presented during the hearing, Alan Beer was alive and conscious following the June 11, 2003 blast. (*See* Hr'g Tr. 24.) Notwithstanding extensive shrapnel wounds, Alan survived long enough for the emergency personnel to identify him as one of the wounded and prepare to transport him to one of the many ambulances that later arrived at the scene. He expired only as he was being taken to the ambulance. (*See id.* at 24–25). In light of these facts, this Court finds that Alan Beer suffered conscious pain and suffering for a brief

period before his death. As such, plaintiff Harry Beer, acting as personal representative of Alan's estate, has established a valid claim against defendants for conscious pain and suffering.

3. Intentional Infliction of Emotional Distress

Ohio and Virginia recognize the existence of a cause of action for intentional infliction of emotional distress, rooted in Section 46 of the restatement (Second) of Torts. *See Pyle v. Pyle,* 463 N.E.2d. 98, 103 (Ohio Ct. App. 1983); *Womack v. Eldridge*, 210 S.E.2d 145, 148 (Va. 1974). While each state has its own particular means of describing intentional infliction of emotional distress, such a claim is established where plaintiffs demonstrate (1) that the defendant engaged in extreme and outrageous conduct with the intent to cause, or with reckless disregard of the probability of causing, emotional distress; (2) that the plaintiff suffered severe or extreme emotional distress; and (3) that the defendant's conduct is the actual and proximate cause of the plaintiff's emotional distress. *See Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, at 42. The supreme courts of Ohio and Virginia have not specifically addressed, however, whether a plaintiff's presence is required to establish a viable IIED claim. Accordingly, "in light the severity of [a terrorist attack,] and the obvious range of potential grief and distress that directly results from such a heinous act, and because a terrorist attack—by its nature—is directed not only at the victims but also at the victims' families," this Court finds that claims for IIED may be brought by family members of terrorist attack victims without having to establish presence. *Id.* at 43–44 (quoting *Heiser*, 466 F. Supp. 2d at 328). Therefore, the Court finds that each of the plaintiffs has standing to recover for an IIED claim.

Based upon the evidence presented, the elements of plaintiffs' claim for intentional infliction of emotional distress are met. Defendants' conduct, in providing material support in a

civil conspiracy with Hamas to conduct suicide bombings, is extreme, outrageous and goes beyond all possible bounds of decency. Further, it is abundantly clear to this Court that plaintiffs have suffered severe emotional distress as a result of Alan's tragic and untimely death. Lastly, this Court finds that defendants' actions proximately caused the death of Alan Beer and the subsequent emotional distress experienced by his mother and siblings. As such, this Court concludes that defendants Iran and MOIS are liable for intentional infliction of emotional distress under a theory of vicarious liability.

In light of the all of the evidence presented, this Court concludes that plaintiffs have "establishe[d] [their] claims or right to relief by evidence satisfactory to the court," and are therefore entitled to the entry of a default judgment against defendants. 28 U.S.C. § 1608(e); *see Roeder*, 333 F.3d at 232.

IV. Damages

A. Compensatory Damages

As a result of the wrongful conduct of defendants Iran and MOIS, plaintiffs have suffered pain and mental anguish. Under the FSIA, if a foreign state may be held liable, it "shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Accordingly, a plaintiff is entitled to the typical bases of damages that may be awarded against tortfeasors under the laws under which his claim is brought. As such, Anna Beer, Phyllis Maisel, and Harry Beer, in his personal capacity, and as personal representative of Alan's estate, are entitled to the typical array of damages that may be awarded against tortfeasors in Ohio. Estelle Carroll is entitled to the typical array of damages that may be awarded against tortfeasors in Virginia.

In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium. *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 (D.D.C. 2006) (Lamberth, J.). "While intervening changes in law have ruled many cases' reliance on federal common law improper, such findings need not disturb the accuracy of the analogy between solatium and intentional infliction of emotional distress." *Id.*

1. Pain and Suffering Award for the Estate of Alan Beer

Harry Beer, as administrator of the Estate of Alan Beer is entitled to redress under two separate theories. First, the wrongful death claim is brought by the administrator of the estate on behalf of the bereaved plaintiffs for lost earnings and their own pain and suffering and loss of society. Second, the administrator of the estate is also entitled to damages for conscious pain and suffering prior to the decedent's death. As to the wrongful death claim, however, there is no evidence demonstrating that Alan's mother or any of his siblings relied upon Alan for financial support. Moreover, plaintiffs have presented no evidence of the present value of Alan's lost wages and earnings that he would have earned but for his untimely death. Under these circumstances, any recovery for Alan's wrongful death is limited to compensation for the mental suffering and loss of society sustained by his beneficiaries. As this Court has already concluded that Alan's mother and siblings are entitled to an award for intentional infliction of emotional distress, any additional recovery for pain and suffering pursuant to the wrongful death statute constitutes an impermissible double recovery. As such, this Court concludes that the recovery available to Alan's estate is limited to compensation for his conscious pain and suffering between his injury and death. This Court therefore finds that Harry Beer, acting as personal representative

Alan's estate, is entitled to $500,000 to be distributed in accordance with the Ohio laws of intestate distribution.[2]

2. Pain and Suffering Award for Alan's Relatives

This Court has previously set out a general framework for compensatory awards for family members of victims who were killed as a result of terrorist activity consisting of $8 million to spouses of deceased victims, $5 million to parents and children of deceased victims, and $2.5 million to siblings of deceased victims. *See Peterson*, 515 F. Supp. 2d at 51–52 n.25 (adopting the damages framework set forth in *Heiser*). This Court adopts that framework as a guideline for awarding damages in the instant matter.

Anna Beer has suffered great mental anguish as a result of the June 11, 2003 that killed her youngest son. Prior to this terrorist attack she was physically able to travel without physical assistance. Alan's death was so upsetting to her that she had to use a wheelchair to attend his funeral. Even today, every conversation she has with her children turns to Alan. (*See* Hr'g Tr. 102.) While this Court recognizes that there is nothing to compensate Anna Beer for Alan's death, it finds that she is entitled to $5 million for her ongoing pain and suffering.

Alan's siblings—Harry Beer, Estelle Carroll, and Phyllis Maisel—have also suffered emotional anguish and pain as a result of his untimely death. This Court recognizes their past and ongoing pain and suffering and will therefore award compensatory damages of $2.5 million for each sibling.

[2] As Alan Beer died intestate (*see* Ex. 11), this Court's award for Alan's conscious pain and suffering shall be distributed in its entirety by Harry Beer, as personal representative of Alan's estate. *See* Ohio Rev. Code. Ann. § 2105.06(F).

B. Punitive Damages

Until Congress passed the National Defense Authorization Act for Fiscal Year 2008, punitive damages were not available against foreign states. Under the newly enacted 28 U.S.C. § 1605A, punitive damages may be awarded. *See* 28 U.S.C. § 1605A(c). Plaintiffs, however, have not properly asserted a cause of action under § 1605A. To benefit from that section, plaintiffs must have either refiled this action or filed a motion for treatment under § 1605A pursuant to section 1083(c)(2), within 60 days from the NDAA's enactment. Plaintiffs have taken no such action here.[3] Accordingly, plaintiffs' claim for punitive damages must be denied.

CONCLUSION

This Court acknowledges plaintiffs' ongoing pain and anguish that resulted from the heinous act of violence caused by defendants and the terrorists they support. Plaintiffs should be praised for the courage and resolve they demonstrated in pursuing this action. Their efforts are to be commended.

An Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, August 26, 2008.

[3] *See supra,* note 1.

Annex 25

***Kirschenbaum, et al. v. Islamic Republic of Iran*, *et al.*, U.S. District Court for the District of Columbia, Findings of Fact and Conclusions of Law, 26 August 2008, Case No. 03-1708**

Excerpts: p. 1 & pp. 11-21

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON KIRSCHENBAUM, *et al.*,	
Plaintiffs,	
v.	
THE ISLAMIC REPUBLIC OF IRAN, *et al.*,	**Civil Action No. 03-1708 (RCL)**
Defendants.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case arises from the December 1, 2001 suicide bombing at the pedestrian mall on Ben Yehuda Street in Jerusalem, Israel. Plaintiffs are Jason Kirschenbaum, who was a victim in the attack, and his parents and siblings. Plaintiffs allege that the Islamic Republic of Iran ("Iran"), and the Iranian Ministry of Intelligence and Security ("MOIS"), are jointly and severally liable for damages from the attack because they provided material support and assistance to Hamas, the terrorist organization that orchestrated and carried out the bombing. As such, defendants are subject to suit under the terrorist exception to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605(a)(7).[1]

[1] The recently enacted National Defense Authorization Act for Fiscal Year 2008 ("NDAA"), Pub. L. No. 110-181, 122 Stat. 3, § 1083, revised the terrorism exception to sovereign immunity by repealing § 1605(a)(7) of Title 28 and replacing it with a separate section, § 1605A. Section 1605A creates a private, federal cause of action against a foreign state that is or was a state sponsor of terrorism, and provides for economic damages, solatium, pain and suffering, and punitive damages.

Plaintiffs mistakenly assert that § 1605A has automatic, retroactive application to any action previously brought under § 1605(a)(7) within the prescribed time limit. Rather, to benefit from § 1605A, a plaintiff in an action pending under § 1605(a)(7) must, within 60 days from the

CONCLUSIONS OF LAW

I. Legal Standard for FSIA Default Judgment

Under the Foreign Sovereign Immunities Act, no judgment by default shall be entered by a court unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. 28 U.S.C. § 1608(e); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C. Cir. 2003), *cert. denied*, 542 U.S. 915 (2004). In FSIA default judgment proceedings, plaintiffs may establish proof by affidavit. *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 268 (D.D.C. 2003) (Urbina, J.). Upon evaluation, the court may accept plaintiffs' uncontroverted evidence as true. *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 255 (D.D.C. 2006) (Lamberth, J.) (citing *Campuzano*, 281 F. Supp. 2d at 268). This Court accepts the uncontested evidence and sworn testimony submitted by plaintiffs as true in light of defendants' failure to object or enter an appearance to contest the matters in this case.

II. Jurisdiction

The Foreign Sovereign Immunities Act is the sole basis for jurisdiction over foreign sovereigns in the United States. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). The "state-sponsored terrorism" exception provides that a foreign sovereign will not be immune to suit in U.S. courts where:

> money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

28 U.S.C. § 1605(a)(7).

In order to subject a foreign sovereign to suit under 28 U.S.C. § 1605(a)(7), plaintiffs must demonstrate that (1) the foreign sovereign was designated by the State Department as a "state sponsor of terrorism;" (2) the victim or claimant was a U.S. national at the time the acts took place; and (3) the foreign sovereign engaged in conduct that falls within the ambit of the statute. *Heiser*, 466 F. Supp. 2d at 254.

Plaintiffs have sufficiently demonstrated each of the elements in this case. First, defendant Iran has been designated a state sponsor of terrorism continuously since January 19, 1984. *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 9, ¶ 19 (D.D.C. 1998) (Lamberth, J.). Second, each of the plaintiffs in this action was a United States national at the time the bombing occurred. Finally, as to the third element, defendant Iran knowingly provided material support to Hamas, the entity that committed the attack. As such, Iran's support of Hamas falls squarely within the ambit of the statute. Defendant MOIS is treated as the state of Iran itself rather than its agent, *Roeder*, 333 F.3d at 234, and thus the same determinations apply to its conduct.

The FSIA provides that personal jurisdiction over a non-immune foreign sovereign exists where service of process has been accomplished pursuant to 28 U.S.C. § 1608. *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286, 298 (D.D.C. 2003) (Lamberth, J.). Since service has been effected and plaintiffs have established an exception to immunity pursuant to § 1605(a)(7), this Court has *in personam* jurisdiction over defendants Iran and MOIS.

III. Liability

A. Proper Causes of Action Under the FSIA

Section 1605(a)(7) is "merely a jurisdiction-conferring provision that does not otherwise provide a cause of action against either a foreign state or its agents." *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1032 (D.C. Cir. 2004). Once a foreign state's immunity has been lifted under § 1605 and jurisdiction is proper, § 1606 provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Section 1606 acts as a "pass-through" to substantive causes of action against private individuals that may exist in federal, state or international law. *See Dammarell v. Islamic Republic of Iran*, Civ. A. No. 01-2224, 2005 WL 756090, at *8–10 (D.D.C. Mar. 29, 2005) (Bates, J.).

In this case, state law provides a basis for liability. First, the law of the United States applies rather than the law of the place of the tort or any other foreign law. This is because the United States has a "unique interest" in having its domestic law apply in cases involving terrorist attacks on United States citizens. *Id.* at *20.

This Court must next determine which state's law to apply. As the forum state, District of Columbia choice of law rules guide the Court's analysis. Under District of Columbia choice of law rules, courts employ a refined government interest analysis under which courts "evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review." *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 41 (D.C. 1989) (citations and internal quotations omitted). This test typically leads to the application of the law of plaintiff's domicile, as the state with the greatest interest in providing redress to its citizens. *See Dammarell*, 2005 WL 756090, at *20–21.

Here, each plaintiff was domiciled in New York at the time of the attack, and the Court—applying the refined government interest test—finds that New York law governs plaintiffs' claims. As required by § 1606, New York law provides a cause of action against private individuals for the kinds of acts alleged against defendants. Plaintiffs allege battery as to Jason Kirschenbaum and intentional infliction of emotional distress as to all plaintiffs. Both claims are torts for which private individuals may face liability. The Court's next task is to determine whether plaintiffs have shown liability and damages for these claims under the laws of New York.

B. Vicarious Liability

The basis of defendants' liability is that they provided material support and resources to Hamas, which personally completed the attack. One may be liable for the acts of another under theories of vicarious liability, such as conspiracy, aiding and abetting, and inducement. This Court finds that civil conspiracy provides a basis of liability for defendants Iran and MOIS and accordingly declines to reach the issue of whether they might also be liable on the basis of aiding and abetting and/or inducement.

Elements of a civil conspiracy under New York law are (1) the corrupt agreement between two or more persons, (2) an overt act, (3) their intentional participation in the furtherance of a plan or purpose, and (4) the resulting damage. *Heiser*, 466 F. Supp. 2d at 267 n.21 (citing *Piccoli A/S v. Calvin Klein Jeanswear Co.*, 19 F. Supp. 2d 157 (S.D.N.Y. 1998)).

As this Court has previously held, "[s]ponsorship of terrorist activities inherently involves a conspiracy to commit terrorist attacks." *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 84 (D.D.C. 2006) (Lamberth, J.) (quoting *Flatow*, 999 F. Supp. at 27). Here, it has been established by evidence satisfactory to this Court that Iran has continuously provided

material support in the form of, *inter alia*, funding, training, and safe haven to Hamas and its members so that they may undertake terrorist attacks like the one in this action. There is no dispute that Hamas committed the attack that injured Jason Kirschenbaum, and indeed claimed responsibility for it. (*See* Clawson Dep. 38:2–6, May 24, 2006.) Finally, as will be discussed below, the plaintiffs in this action incurred damages resulting from the injuries caused by the conspiracy. Accordingly, the elements of civil conspiracy under New York law are established between Hamas and defendants Iran and MOIS.

C. Jason Kirschenbaum's Claims

1. Battery

Under New York Law, a battery is an "intentional wrongful physical contact with another person without consent." *Nikbin v. Islamic Republic of Iran*, 517 F. Supp. 2d 416, 427 (D.D.C. 2007) (Bates, J.) (citing *Girden v. Sandals Int'l*, 262 F.3d 195, 203 (2d Cir. 2001)). "In the case of battery, the slightest unlawful touching of the person of another is sufficient, for the law cannot draw the line between different degrees of violence and therefore totally prohibits the first and lowest stage, since every individual's person is sacred and no other has the right to touch it." *Id.* (quoting *United Nat'l Ins. Co. v. Waterfront N.Y. Realty Corp.*, 994 F.2d 105, 108 (2d. Cir. 1993). "[T]he required intent is merely that the defendant intentionally made bodily contact and that the intended contact was itself offensive or without consent." *Id.* (quoting *Campoverde v. Sony Pictures Entm't*, No. 01 Civ. 7775, 2002 WL 31163804, at *11 (S.D.N.Y. Sept. 30, 2002)).

Based upon the evidence presented, plaintiff Jason Kirschenbaum has made out a valid claim for battery under New York law. Defendants, through their material support of Hamas, clearly had the intent to make offensive bodily contact without consent. In addition, plaintiffs

have proved through pictures, x-rays, and testimony, that Jason encountered direct physical contact and consequently injured his arm, leg, and back as a direct result of this act. (*See* Exs. 7A-H, 10A-F.) Accordingly, defendants Iran and MOIS are liable for battery under the theory of vicarious liability.[3]

D. Family Members' Claims for Intentional Infliction of Emotional Distress

New York, adopting the approach taken in section 46 of the Restatement (Second) of Torts, recognizes intentional infliction of emotional distress as a tort. *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d at 345–56 (citing *Howell v. New York Post Co.*, 612 N.E.2d 699, 702 (1993)). The four elements of a claim of intentional infliction of emotional distress under New York law are: (1) extreme and outrageous conduct; (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and injury; and (4) severe emotional distress. *Id.* This Court has held that no presence requirement is necessary to successfully bring an IIED claim under New York law because of the severe nature of terrorist attacks and the wide range of potential grief and distress resulting therefrom. *See Peterson*, 515 F. Supp. 2d at 43; *Heiser*, 466 F. Supp. 2d at 346. As this Court has previously found, "a terrorist attack—by its nature—is directed not only at the victims but also at the victims' families." *Heiser*, 466 F. Supp. 2d at 328 (quoting *Salazar v. Islamic*

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[3] Because Jason Kirschenbaum can recover for mental anguish and suffering under his battery claim, the Court need not separately consider his intentional infliction of emotional distress claim, which would result in an impermissible double recovery. *See Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 40 n.7 (D.D.C. 2007) (Lamberth, J.); *see also Nikbin*, 517 F. Supp. 2d at 428 (recognizing that New York law allows a plaintiff to recover compensatory damages for assault, battery, and intentional infliction of emotional distress "for the injury itself [and for] conscious pain and suffering including mental and emotional anxiety" (internal quotation omitted)).

Republic of Iran, 370 F. Supp. 2d 105, 115 n.12 (D.D.C. 2005) (Bates, J.)). The evidence in the instant action is consistent with the Court's previous findings as to the impact of terrorist attacks. Here, the evidence demonstrates that the defendants' motives in providing material support to Hamas were to facilitate a deliberately outrageous act of terrorism intended to not only cause physical harm to those present on Ben Yehuda Street, but also to instill terror in their loved ones and others. Thus, no presence requirement is necessary for plaintiffs to bring IIED claims under New York law. Standing to seek recovery for an IIED claim is limited, however, to the victim's near relatives which include the victim's spouse, child, sibling, or parents. *Heiser*, 466 F. Supp. 2d at 329.

This Court further concludes that defendants' actions proximately caused the severe injury of Jason Kirschenbaum and the subsequent emotional distress experienced by Jason, his father, mother, brothers and sister. Jason and all of the family members have endured and will continue to endure a level of emotional distress that far surpasses the level of distress a reasonable person is expected to suffer. They are constantly reminded of that experience on a daily basis, and continue to fight fear and anxiety that has resulted from this malicious attack.

Accordingly, this Court concludes that plaintiffs have "establishe[d] [their] claims or right to relief by evidence satisfactory to the court," and are therefore entitled to the entry of a default judgment against defendants. 28 U.S.C. § 1608(e); *see Roeder*, 333 F.3d at 232.

IV. Damages

A. Compensatory Damages

In determining the appropriate compensatory damages for each plaintiff's pain and suffering, this Court is guided not only by prior decisions awarding damages for pain and suffering, but also by those which awarded damages for solatium. *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 (D.D.C. 2006) (Lamberth, J.). This Court has previously set out a general framework for compensatory awards for surviving victims of terrorist attacks including awards of $2.5 million to parents of surviving victims and $1.25 million to siblings of surviving victims. *Peterson*, 515 F. Supp. 2d at 52. Damages for a surviving victim are typically determined based upon an assessment of the following factors: "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life." *Id.* n.26 (quoting *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 59 (D.D.C. 2006) (Lamberth, J.).

1. Award for Pain and Suffering for Jason Kirschenbaum

The physical pain Jason Kirschenbaum was forced to endure is without doubt. He was thrown to the floor when the bomb exploded near him. Nuts, bolts, and other objects penetrated his body in various places creating wounds that were ultimately left open to allow the objects to surface. The metal objects often surfaced in a different location than where they penetrated, thus creating multiple entrance and exit wounds over time. Jason's condition required multiple surgeries, and he was unable to walk without physical therapy. His arm is slightly misshaped as a result of the attack.

Jason also suffered extreme emotional pain and suffering from this experience. Jason's severe emotional pain was of such a nature that he found it almost impossible to communicate to others about his feelings. He wanted to show his family members and friends that he was alright, but really he was not. His closest family members found him more irritable, snappy, and morose. The emotional pain continues with him to this day, as he is constantly reminded of the experience and worries about being branded as a terrorist attack victim.

It is noteworthy that during the evidentiary hearing, Jason Kirschenbaum's entire family honored his request that they not be present in the courtroom when he testified. It is clear from the evidence that Jason is still experiencing mental anguish, pain and suffering not only as a result of his physical wounds, but also from the sheer terror of the event and the images which are forever set in his mind. In consideration of the severity of his injuries and nature of the long-lasting effect, this Court finds that an award of $5 million in compensatory damages is appropriate for Jason Kirschenbaum's injury and extreme pain and suffering.

2. Award for Pain and Suffering for Jason's Family Members

This Court finds that Martin and Isabelle Kirschenbaum suffered extreme mental anguish both in the days surrounding the attack and afterwards. They suffered great emotional anxiety in the hours and days that followed, not being able to make contact with him, or even find out whether he was alive. Isabelle Kirschenbaum's pain was intensified when she saw Jason being wheeled into an ambulance. She was so distraught by the experience that after her husband left for Israel, she had trouble sleeping at night. Even once both parents joined Jason in Israel, they endured the sight of their youngest son with multiple open wounds, and watched him suffer as the nuts and bolts surfaced, necessitating multiple surgeries. They tended to Jason's wounds and

accompanied him on numerous trips to the hospital for treatment, surgery, and physical therapy, all the while dealing with the severe nature of the experience and the added strain on their relationship with their son, who was suddenly withdrawn and reluctant to communicate. To this day, they are still forced to remember and relive the experience, and the pain does not go away. This Court recognizes their past and ongoing pain and suffering and will therefore award compensatory damages of $2.5 million for each parent.

This Court also finds that David and Joshua Kirschenbaum, as well as Danielle Teitlebaum suffered extreme pain and suffering during and after the attack. Joshua Kirschenbaum, who was actually in Israel at the time of the attack, endured extreme mental anguish upon learning that his brother was involved in the attack and later at the hospital where he saw bodies covered with sheets and did not know whether his brother was under them, or injured and alive. Joshua Kirschenbaum also experienced firsthand the aftermath of multiple surgeries, pain, treatment, therapy, psychological changes, and such, as Jason stayed with him in his apartment after the bombing. Both David Kirschenbaum and Danielle Teitlebaum experienced severe emotional pain while trying to comfort their mother and simultaneously dealing with their own fears and mental anguish associated with the bombing and the injury of their brother. Accordingly, this Court will follow its previous framework and award $1.25 million for each of the siblings.

B. Punitive Damages

Until Congress passed the National Defense Authorization Act for Fiscal Year 2008, punitive damages were not available against foreign states. Under the newly enacted 28 U.S.C. § 1605A, punitive damages may be awarded. *See* 28 U.S.C. § 1605A(c). Plaintiffs, however,

have not asserted a cause of action under § 1605A. To benefit from that section, plaintiffs must have either refiled this action or filed a motion for treatment under § 1605A pursuant to section 1083(c)(2), or filed a new related action pursuant to section 1083(c)(3), within the relevant 60-day period. Plaintiffs have taken no such action here. Accordingly, plaintiffs' claim for punitive damages must be denied.

CONCLUSION

This Court acknowledges plaintiffs' ongoing pain and anguish that resulted from the heinous acts of violence caused by defendants and the terrorists they support. Plaintiffs should be praised for the courage and resolve they demonstrated in pursuing this action. Their efforts are to be commended.

An Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, August 26, 2008.

Annex 26

Weinstein, et al. v. The Islamic Republic of Iran, et al., **U.S. District Court, Eastern District of New York, Memorandum and Order, 5 June 2009, Case 2:02-mc-00237-LDW**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
SUSAN WEINSTEIN, individually, as co-administrator of the Estate of Ira William Weinstein, and as natural guardian of plaintiff David Weinstein, et al.,

Plaintiffs-Judgment Creditors,

-against-

THE ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants-Judgment Debtors.
----------x

MEMORANDUM AND ORDER

Misc. 02-237

APPEARANCES

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WEXLER, District Judge

Plaintiffs-judgment creditors ("plaintiffs") move for the appointment of a receiver pursuant to Federal Rule of Civil Procedure ("FRCP") 69 and New York Civil Practice Law & Rules ("CPLR") § 5228(a) to sell property located at 135 Puritan Avenue, Forest Hills, New York (the "Property") owned by Bank Melli to satisfy their judgment in the underlying action

against defendants-judgment debtors the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information, and three senior Iranian officials. Plaintiffs assert that the Property is subject to attachment under the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 28 U.S.C. § 1610 note. Bank Melli moves to dismiss this proceeding and to stay the appointment of a receiver pending resolution of its motion to dismiss. Plaintiffs oppose Bank Melli's motion to dismiss.[1] The Court, having granted Bank Melli's motion to stay, now denies Bank Melli's motion to dismiss and grants plaintiffs' motion to appoint a receiver.

I. BACKGROUND

For purposes of this proceeding, the relevant background has been summarized sufficiently in the Court's earlier decision in Weinstein v. Islamic Republic of Iran, 299 F. Supp. 2d 63 (E.D.N.Y. 2004) ("Weinstein I"), and will not be repeated here, except as necessary to this decision. In Weinstein I, this Court held that Bank Melli's assets were not, at that time, "blocked" under §§ 202 and 203 of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701, 1702, and, therefore, not subject to attachment under the TRIA. Weinstein I, 299 F. Supp. 2d at 74-75. However, as plaintiffs assert, on October 25, 2007, the United States Department of Treasury, Office of Foreign Assets Control ("OFAC") designated Bank Melli as a proliferator of weapons of mass destruction under Executive Order 13,382. See Exec. Order 13,382, 70 Fed. Reg. 38,567 (June 28, 2005). Executive Order 13,382, which the President issued pursuant to the IEEPA, provides that "all property and interests in property" of

[1] By letter (docket number 72), plaintiffs seek leave to submit a one-page surreply, purportedly to correct a misstatement in Bank Melli's reply papers. The request is granted. In addition, the Court notes that the United States Department of Justice has declined to make a submission on the issues raised by the parties, despite an invitation from the Court.

persons listed in the order or subsequently designated by the Treasury Department "that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in." Id. (emphasis added). As a result of Bank Melli's designation, according to plaintiffs, the Property is blocked and subject to attachment under the TRIA, which authorizes attachment of the "blocked assets" of not only a terrorist party, such as Iran, but the assets of its agencies and instrumentalities, such as Bank Melli. In this respect, TRIA § 201(a) provides:

> Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based on an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in the aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a), 116 Stat. at 2337 (emphasis added). Thus, plaintiffs claim, they are entitled to enforce their judgment against the Property because the Property is a "blocked asset" under the TRIA and Bank Melli is an "agency or instrumentality" of Iran.

Although Bank Melli concedes that the Property is a "blocked asset" under the TRIA and that Bank Melli is an "agency or instrumentality" of Iran, it argues: (1) that the attachment and sale of the Property would violate the "Treaty of Amity" between the United States and Iran, see Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853, 1957 WL 52887 ("Treaty of Amity"); (2) that the attachment and sale would constitute a "taking" not for public purpose and without just compensation in violation of

the Treaty of Amity and the Fifth Amendment of the United States Constitution; (3) that the Treasury Department's blocking of Bank Melli's assets, including the Property, violates the "Algiers Accords," see Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, reprinted in 20 I.L.M. 224 (1981) ("Algiers Accords"); and (4) that a Court order permitting the attachment and sale would put the United States in further breach of the Algiers Accords.

II. DISCUSSION

A. Bank Melli's Motion to Dismiss

1. Treaty of Amity Article III(1)

Bank Melli argues that the attachment and sale of the Property would violate Article III(1) of the Treaty of Amity, which provides:

> Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, 'companies' means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

Treaty of Amity art. III(1). According to Bank Melli, the Treaty of Amity "adopts an established principle of customary international law," namely, that the separate juridical status of an Iranian company must be respected. Memorandum of Law in Support of Bank Melli's Motion to Dismiss ("Bank Melli Mem."), at 15. In Bank Melli's view, this principle prohibits the statutory veil-piercing authorized by TRIA § 201(a). This "presumption of separateness," according to

Bank Melli, may only be overcome under circumstances specified in First National City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611 (1983) ("Bancec"). Under Bancec, to pierce the corporate veil distinguishing a foreign state and from its agencies and instrumentalities, a judgment-holder must show that the agency or instrumentality is "so extensively controlled by [the foreign state] that a relationship of principal and agent is created" or that recognizing the entity as separate "would work fraud or injustice." See id. In other words, under Bancec, plaintiffs cannot recover on their judgment against defendants by executing on Bank Melli's blocked assets unless they overcome the presumption that treats Iran's agencies and instrumentalities as entities juridically separate from Iran.

Plaintiffs argue that the veil piercing authorized by TRIA § 201(a) obviates application of Bancec and does not violate the Treaty of Amity. This Court agrees. Neither the language nor purpose of Article III(1) of the Treaty of Amity supports Bank Melli's position. As Bank Melli points out, the Treaty of Amity between Iran and the United States is one of a number of friendship, commerce, and navigation ("FCN") treaties negotiated by the United States following WWII. Bank Melli Mem. at 3. As plaintiffs point out, "most if not all of these FCN treaties contain [corporation] provisions substantively identical to Article III(1)." Plaintiff-Judgment Creditor's Memorandum in Opposition to Bank Melli's Motion to Dismiss and Reply in Further Support of Motion for Appointment of a Receiver Pursuant to CPLR § 5228(a), at 7-9 (citing treaties). As the Supreme Court has recognized, "the primary purpose of the corporation provisions of the Treaties was to give corporations of each signatory legal status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms." Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 185-86

(1982). Indeed, "the purpose of the Treaties was not to give foreign corporations greater rights than domestic companies, but instead to assure them the right to conduct business on an equal basis without suffering discrimination based on their alienage." Id. at 187-88. There is nothing in the language or purpose of Article III(1) of the Treaty of Amity that precludes the veil-piercing authorized by TRIA § 201(a).

In any event, to the extent that TRIA § 201(a) may conflict with Article III(1) of the Treaty of Amity, the TRIA would "trump" the Treaty of Amity. See United States v. Yousef, 327 F.3d 56, 110 (2d Cir. 2003) (recognizing Supreme Court holdings that subsequent "legislative acts trump treaty-made international law"). Indeed, the Supreme Court has held explicitly that "when a statute which is subsequent in time [to a treaty] is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null." Breard v. Greene, 523 U.S. 371, 376 (1998) (internal quotations omitted); see also Whitney v. Robertson, 124 U.S. 190, 194 (1888) (holding that if treaty and federal statute conflict, "the one last in date will control the other").

As for the applicability of Bancec, Judge Victor Marrero of the United States District Court for the Southern District of New York, in a persuasive analysis, concluded that the plain language and legislative history of TRIA § 201(a) demonstrate a clear expression to make agencies and instrumentalities substantively liable for the debts of their related foreign governments, overriding the Bancec presumption of independent status for the agencies and instrumentalities of terrorist parties. See Weininger v. Castro, 462 F. Supp. 2d 457, 484-87 (S.D.N.Y. 2006). For the same reasons, this Court concludes that TRIA § 201(a) obviates the application of Bancec to a determination of whether the blocked assets of Bank Melli

(admittedly an agency or instrumentality of a terrorist party) are available satisfy the judgment against defendants (terrorist parties). That there was no FCN treaty at issue in Weininger (Cuba does not have such treaty with the United States) is not significant, given this Court's determination that Article III(1) of the Treaty of Amity does not preclude the veil piercing authorized by TRIA § 201(a).

Accordingly, this ground for dismissal is rejected.

2. Treaty of Amity Article IV(2) and the Fifth Amendment

Bank Melli further argues that the attachment and sale would constitute a "taking" not for public purpose and without just compensation in violation of Article IV(2) of the Treaty of Amity and the Fifth Amendment of the United States Constitution. Article IV(2) of the Treaty of Amity provides, in relevant part: "Property of nationals and companies of either High Contracting Party . . . shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation." Treaty of Amity art. IV(2). The Fifth Amendment prohibits the taking of "private property . . . for public use, without just compensation." U.S. Const. amend. V.

The parties primarily dispute whether there is a "taking" for Fifth Amendment purposes. Plaintiffs rely on the decision in Paradissiotis v. United States, 304 F.3d 1271 (Fed. Cir. 2002), for their argument that there is no "taking" of Bank Melli's Property under the circumstances. In that case, the plaintiff, Paradissiotis, was a Cypriot national with close affiliations to the government of Libya. Based on those affiliations, OFAC listed him as a "Specially Designated National" under OFAC's "Libyan Sanctions Regulations." As a result of that designation, Paradissiotis was treated "as an agent of the government of Libya" and his assets within the

United States were "frozen." Id. at 1273. Among Paradissiotis's frozen assets in the United States were stock options in a Delaware corporation. Due to the blocking order, and OFAC's denial of his requests for a license to sell or exercise his stock options, Paradissiotis was unable to sell or exercise the stock options. Eventually those options expired and became worthless. Paradissiotis brought suit in the Court of Federal Claims against the United States, asserting that the freezing of his assets and the destruction of the value of his stock options was an unconstitutional "taking."[2] The Court of Federal Claims rejected this argument, and the Federal Circuit affirmed, stating:

> On several occasions, this court has addressed Fifth Amendment takings claims raised by persons or entities that have been adversely affected by actions taken for national security reasons to freeze the assets of, or prohibit transactions by, foreign entities, and on each occasion we have held that the actions have not violated the Takings Clause. With specific reference to the Libyan Sanctions Regulations, we have held that those regulations substantially advance the national security of the United States and that the frustration of contract rights resulting from the application of those regulations does not constitute a Fifth Amendment taking.
>
> The principle underlying those decisions was articulated by the Supreme Court in the *Legal Tender Cases (Knox v. Lee),* 79 U.S. (12 Wall.) 457, 551, 20 L. Ed. 287 (1870), where the Court explained:
>
> > A new tariff, an embargo, a draft, or a war may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the worth of contracts. But whoever supposed that, because of this, a tariff

[2]Paradissiotis originally brought an action in the United States District for the Southern District of Texas challenging the denial of a license to sell or exercise the options and asserting, inter alia, a Fifth Amendment takings claim. Paradissiotis, 304 F.3d. at 1273. The district court granted summary judgment dismissing his action, including his takings claim, just two days before the stock options expired. Id. The Fifth Circuit affirmed, except as to the takings claim, holding that the Court of Federal Claims had exclusive jurisdiction over that issue. Id. at 1273-74.

> could not be changed, or a non-intercourse act, or an embargo be enacted, or a war be declared? ... [W]as it ever imagined this was taking private property without compensation or without due process of law?
>
> While takings law has changed significantly since those words were written, the language used by the Supreme Court has often been quoted, and the principle remains sound. Thus, valid regulatory measures taken to serve substantial national security interests may adversely affect individual contract-based interests and expectations, but those effects have not been recognized as compensable takings for Fifth Amendment purposes. As applied to economic sanctions such as orders blocking transactions and freezing assets, that principle disposes of any suggestion that the United States could freeze Libyan assets in this country only if it were prepared to pay the cost of any losses resulting from the freeze. Economic sanctions would hardly be sanctions if the foreign targets of the sanctions could simply stand in line to be compensated for the losses those sanctions caused them.

Paradissiotis, 304 F.3d. at 1274-75 (citations omitted).

Moreover, the Federal Circuit noted that Paradissiotis's loss of the stock options was the entirely foreseeable result of his own voluntary conduct:

> Mr. Paradissiotis's stock options were in no jeopardy until 1990, when he took the step that ultimately resulted in his loss – serving as a director of a Libyan-controlled corporation. At that time, the consequences of his conduct were entirely foreseeable. The Libyan Sanctions Regulations had been in effect for four years, it was clear that his position made him subject to those regulations, and it was clear that exercising his stock options would be a prohibited transaction under the regulations. The pertinent date for considering Mr. Paradissiotis's expectations was 1990, when he took the step that subjected him to regulations that otherwise would have had no effect on him. As of that date, he had clear notice of what the consequences of his actions would be. Mr. Paradissiotis took the risk – a big risk, in light of the high visibility of the Libyan sanctions regime – that his involvement with a Libyan-controlled corporation would result in loss of access to his United States assets. The fact that his risk-taking turned out badly

> for him does not render it a taking in violation of the Fifth Amendment.

Paradissiotis, 304 F.3d. at 1276 (citation omitted).

This Court agrees with plaintiffs that, based on the reasoning in Paradissiotis, the blocking and attachment of the Property in the circumstances presented here does not constitute a "taking" of Bank Melli's assets under the Fifth Amendment. As plaintiffs argue, Bank Melli's property in the United States was placed in jeopardy because the bank itself acted to proliferate weapons of mass destruction, which in turn lead to its designation and the blocking of its assets – a designation it does not challenge here. Like Paradissiotis, Bank Melli had "clear notice of what the consequences of [its] actions would be" – i.e., designation and the blocking of its assets, thereby subjecting its assets to execution under the TRIA. Indeed, since enactment of the TRIA in 2002, one of the risks and consequences of a designation under IEEPA is that the designated entity's assets will be subject to execution under the TRIA. Bank Melli presumably knew this well, since it was subject to TRIA litigation in this Court shortly after the TRIA was passed. See Weinstein I, 299 F. Supp. 2d 63. Bank Melli took the risks that its involvement with Iran's proliferation of weapons of mass destruction would result in the very consequences it now faces under the Iranian sanctions programs. That those consequences may have led to the attachment of its Property – a blocked asset – does not make it a taking under the Fifth Amendment. See Paradissiotis, 304 F.3d. at 1276 ("The fact that his risk-taking turned out badly for him does not render it a taking in violation of the Fifth Amendment."). For similar reasons, there is no "taking" under the Treaty of Amity.

Accordingly, this ground for dismissal is rejected.[3]

3. Algiers Accords

Bank Melli also argues that the blocking of the Property violates the Algiers Accords. As detailed in Weinstein I, on November 14, 1979, President Carter issued Executive Order 12,170 in response to Iran's seizure of the U.S. Embassy in Tehran, Iran and the resulting hostage crisis. In Executive Order 12,170, the President directed:

> I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

Exec. Order 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979). Eventually, on January 19, 1981, the United States and Iran, through the efforts of the government of Algeria, reached an agreement, commonly known as the Algiers Accords, ending the hostage crisis. Under the Algiers Accords, the United States agreed, inter alia, to "restore the financial position of Iran, insofar as possible, to that which existed prior to November 14, 1979," and to "commit itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction." Algiers Accords, 20 I.L.M. at 224. The United States further agreed (with some exceptions) to "arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad." Id. at 227. As further detailed in Weinstein

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[3]Bank Melli also argues that attachment and sale of the Property will violate Treaty of Amity Articles IV(1), IV(4), and V(1) by failing to treat "Iranian companies . . . in the same manner as U.S. companies, that is without discrimination and without interference into their internal affairs and property interests." Bank Melli Mem. at 20. Bank Melli offers virtually no support for this argument. Accordingly, this ground for dismissal is rejected.

I, pursuant to the Algiers Accords, most Iranian assets were unblocked. See Weinstein I, 299 F. Supp. 2d at 67-68.

According to Bank Melli, the Property has been an asset within the United States prior to November 14, 1979, making the blocking by Executive Order 13,382 a breach of the Algiers Accords. This argument is without merit. As plaintiffs argue, and as noted above, under the Algiers Accords, the United States had obligations, inter alia, to "ensure the mobility and free transfer of all Iranian assets within its jurisdiction," to "commit itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction," and to "arrange . . . for the transfer to Iran of all Iranian properties which are located in the United States and abroad." These obligations were fulfilled by the series of executive orders and regulations releasing restraints on Iranian property, presumably including the Property. See Weinstein I, 299 F. Supp. 2d at 67-68. Presumably, Bank Melli was then free to use and dispose of the Property as it saw fit, at least until the Property was blocked on October 25, 2007. Bank Melli fails to explain how the United States has violated the Algiers Accords by subsequently imposing blocking sanctions on Iranian property (including property of Iran's agencies and instrumentalities) based on subsequent Iranian conduct (including the conduct of its agencies and instrumentalities) or how an order of this Court permitting the attachment and sale would put the United States in further breach of the Algiers Accords.

Accordingly, these grounds for dismissal are rejected.

Based on the Court's rejection of the grounds raised by Bank Melli, the motion to dismiss is denied.

B. Plaintiffs' Motion to Appoint a Receiver

As for plaintiffs' motion to appoint a receiver, the Court concludes that the Property is subject to attachment under the TRIA. Accordingly, plaintiffs' motion for the appointment of a receiver is granted.

III. CONCLUSION

For the above reasons, Bank Melli's motion to dismiss is denied and plaintiffs' motion to appoint a receiver is granted. Nevertheless, the Court stays this proceeding during the pendency of an appeal by Bank Melli, should it choose to appeal. The Clerk of Court is directed to administratively close this matter without prejudice to the right to reopen following the expiration of the time to appeal or, if an appeal is taken, upon the determination of the appeal.

SO ORDERED.

/s/
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Date: Central Islip, New York
June 5, 2009

Annex 27

Levin, et al. v. Bank of New York, et al., **U.S. District Court, Southern District of New York, Complaint, 22 June 2009, Case No. 09 Civ. 5900**

Excerpts: pp. 1-22

JUDGE PATTERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MR. JEREMY LEVIN and DR. LUCILLE LEVIN,

Plaintiffs,

-v-

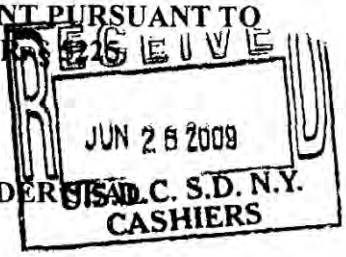
BANK OF NEW YORK, JP MORGAN CHASE, SOCIETE GENERALE and CITIBANK,

Defendants.

09 CV 5900

Civ. No.

COMPLAINT PURSUANT TO N.Y. C.P.L.R. § 325



FILED UNDER SEAL

Plaintiffs/Judgment Creditors, by their attorneys, complaining of the Defendants/Garnishees, allege for their Complaint as follows:

NATURE OF PROCEEDING AND RELIEF REQUESTED

1. Plaintiffs / Judgment Creditors, Dr. Lucille Levin and Mr. Jeremy Levin, ("Plaintiffs") hold an unsatisfied final judgment in the total amount of $28,807,719 against Judgment Debtor Islamic Republic of Iran ("Iran") that was entered by the U. S. District Court for the District of Columbia on February 6, 2008, and thereafter registered in this Court pursuant to 28 U.S.C. § 1963 (2009) as Docket Number M18-302. See Ex. A (Judgment dated February 6, 2008). The judgment arose from the 1984 kidnapping of Jeremy Levin in Beirut, Lebanon, by Hizbollah terrorists who received training, support, aid, funding, and direction from the Republic of Iran.

09:P2219332.doc

2. Plaintiffs filed their complaint on December 30, 2005 under 28 U.S.C. § 1605(a)(7)(2007), the Foreign Sovereign Immunities Act ("FSIA"), which was repealed and replaced by 28 USC § 1605A (2009) in 2008. In 2008, Congress enacted amendments to the FSIA in §1083 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110-181, 122 Stat. 3 (2008), ("NDAA"), to make enforcement of judgment easier for plaintiffs by "expand[ing] the ability of claimants to seek recourse against the property of that foreign state, ... by permitting any property in which the foreign state has a beneficial ownership to be subject to execution of that judgment." National Defense Authorization Act for Fiscal Year 2008, H.R. Rep. No. 110-477, at 1001 (2008)(Conference Report to Accompany H.R. 1585).

3. Defendants/Garnishees Bank of New York, JP Morgan Chase, Societe Generale, and Citibank ("Defendant Banks") have reported to the Office of Foreign Assets Control ("OFAC") of the U.S. Treasury Department, pursuant to their obligations under various Executive Orders issued to carry out economic sanctions against terrorists, terrorists groups, or state sponsors of terrorism, including Judgment debtor Iran, that they are in possession of assets blocked by the U.S. government due to the fact that Iran has an interest in them either directly or indirectly ("Iranian Blocked Assets"). See Ex. B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008).

4. Information regarding Iranian Blocked Assets held by Defendant Banks and incorporated herein was obtained by Plaintiffs from OFAC and is subject to a protective order entered on September 30, 2008, by the District Court of the District of

Columbia, in *Levin v. Islamic Republic of Iran*, No. 05-CV-02494 (GK)(D.D.C)(the "Levin Litigation"). See Ex. C. ("Protective Order"). Under Paragraph 9 of the Protective Order, all "Confidential Information that is filed with any court, and any pleadings, motions, exhibits, or other papers filed with the court, referencing or containing Confidential Information, shall be filed under seal and kept under seal until further order of the Court." Ex. C ¶ 9. However, the Confidential Information may be used for the purpose of attempting to collect upon the judgment entered in [*Levin v. Islamic Republic of Iran*, No. 05-CV-02494 (GK)(D.D.C)] (the "Levin Litigation"). Ex. C ¶ 3. Exempt from the Protective Order are the "courts and their support personnel ... in any proceedings incident to efforts to collect on the judgment" and "persons and entities and their counsel served with writs of attachment or other legal process incident to efforts to collect on the judgment entered in the Levin Litigation or those holding assets identified in the Confidential Information." See Ex. C ¶¶ 5.b., 5.c. Further, Defendant Banks are "restricted to using Confidential Information only for purposes related to the satisfaction of judgment issued in the Levin Litigation and not for any other litigation or proceeding or for any business, commercial, competitive, personal or other purpose." Ex. C ¶ 6.

5. Pursuant to Fed. R. Civ. P. 69(a), Plaintiffs hereby request that this Court enforce Plaintiffs' February 6, 2008, judgment against the Judgment debtor Iran by ordering Defendants/Garnishees Bank of New York, JP Morgan Chase, Societe Generale, and Citibank to pay to Plaintiffs the monies which have been identified by OFAC as assets in which the Islamic Republic of Iran has an interest in possession of Defendant

Banks. See Ex. D (Attachment A: Assets blocked by entities in the United States due to a nexus with a designated entity of Iran (January 1, 2007 through June 30, 2008), on service copies to defendants, only the information relating to their institutions is provided).

6. Section 5225 (b) of New York Civil Practice Law and Rules ("C.P.L.R.") states:

> Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property *in which the judgment debtor has an interest*, ... where it is shown that the judgment debtor is entitled to the possession of such property or that *the judgment creditor's rights to the property are superior to those of the transferee*, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor... N.Y. C.P.L.R. § 5225(b)(1997)(emphasis added).

7. Plaintiffs are entitled to the Iranian Blocked Assets held by Defendant Banks and have superior rights to the Defendant Banks to the assets under § 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"), which provides in pertinent part:

> ... in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, ... the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution ... in order to satisfy such judgment ....

Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201(a), 116 Stat. 2322 (2002).

8. Further, section 1610 of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §1610 (2009) defines the types of property "subject to execution or attachment in aid of execution..." of judgments by United States citizens who are victims of state

sponsors of terrorism, such as Judgment debtor Iran. Section 1610 provides in pertinent part:

> (f)(1)(A) Notwithstanding any other provision of law, … *any property with respect to which financial transactions are prohibited or regulated* pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.
> And,
> (g)(1) … [T]he property of a foreign state against which a judgment is entered under section 1605A [and its predecessor 1605 (a)(7)], and the property of an agency or instrumentality of such a state, *including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity*, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, *regardless of--*
>
> (A) the level of economic control over the property by the government of the foreign state;
> (B) whether the profits of the property go to that government;
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
> (D) whether that government is the sole beneficiary in interest of the property; or
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.
> (emphasis added) 28 U.S.C. §1610 (2009).

9. Judgment Debtor Iran has an interest in the Iranian Blocked Assets held by Defendant Banks, which is subject to execution of judgment by Judgment Creditor/Plaintiffs pursuant to 28 U.S.C. §1610 (2009). See Exhibit B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008.)

10. C.P.L.R. § 5225(b) "provides for a two-step analysis in *determining whether property belonging* to a judgment debtor—but in the possession of a third party—should be *turned over to a judgment creditor.*" *Velocity Inv., LLC v. Kawski*, 864 N.Y.S.2d 734, 740 (N.Y. City Ct. 2008)(quoting *Beauvais v. Allegiance Sec., Inc.*, 942 F.2d 838, 840 (2nd Cir. 1991)). "First, it must be shown that the judgment debtor has an interest in the property the creditor seeks to reach." *Id. (*quoting *Beauvais*, 942 F.2d at 840). Second, the trial court must "make one of two findings: it must find either that the judgment debtor is entitled to the possession of such property, or it must find that the judgment creditor's rights to the property are superior to those of the party in whose possession it is." *Id. (*quoting *Beauvais*, 942 F.2d at 840)..

11. Because (1) Iran has an interest in the Iranian Blocked Assets held by Defendant Banks, and (2)Plaintiffs' interests are superior to the Defendant Banks' interests in the funds, this Court should enter judgment in favor of Plaintiffs and order Defendant Banks to convey, assign, and pay to Plaintiffs in satisfaction of their judgment against Judgment debtor Iran all right, title, interest, and money in the identified assets set forth in Ex. D (Attachment A: Assets blocked by entities in the United States due to a nexus with a designated entity of Iran (January 1, 2007 through June 30, 2008), on service copies to defendants, only the information relating to their institutions is provided). N.Y. C.P.L.R. § 5225; Fed. R. Civ. P. 69(a)(1); Protective Order ¶ 6.

JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction in this action pursuant to 28 U.S.C. § 1331(2009), and § 201 of the Terrorism Risk Insurance Act ("TRIA"). Also,

Section 1605(a)(7) and its successor 1605A of the FSIA create exclusive federal subject-matter jurisdiction and abrogates the sovereign immunity of designated foreign state sponsors of terrorism (such as Iran) in civil actions for money damages "for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources...for such an act..." 28 U.S.C. §§ 1605(a)(7)(2007), 1605A (2009).

This Court also has jurisdiction over this matter pursuant to its inherent ancillary enforcement jurisdiction, since this is an action to enforce a federal judgment registered in this Court pursuant to 28 U.S.C. §§ 1331, 1963 (2009).

13. This Court has jurisdiction over Defendants pursuant to Fed. R. Civ. P. 4(k).

14. The Southern District of New York is the proper venue for this action pursuant to 28 U.S.C. § 1391(b) and (d)(2009).

THE PARTIES

15. Plaintiffs are United States citizens residing in the United States. Plaintiff Jeremy Levin ("Mr. Levin") was a journalist who was kidnapped and held hostage in Lebanon for 343 days. Plaintiff Dr. Lucille Levin ("Dr. Levin"), wife of Mr. Levin, attempted to free Mr. Levin from his captors by raising awareness of the hostage situation and by engaging foreign administrations while undergoing severe emotional trauma and financial stress. *See Levin v. Islamic Republic of Iran,* 529 F. Supp.2d 1 (D.D.C. 2007).

///

16. Plaintiffs are Judgment Creditors holding an unsatisfied judgment against Iran in the amount of $28,807,719 plus post-judgment interest. *Id.* See Ex. A (Judgment dated February 6, 2008).

17. Defendant Bank of New York ("BONY") is incorporated under the laws of New York, domiciled and headquartered in New York, with offices at One Wall Street, New York, New York. Defendant BONY has reported to OFAC that it is in possession of Iranian Blocked Assets in which Iran has an interest in the approximate amount set forth on Exhibit D. Defendant BONY is named as a garnishee in this action pursuant to C.P.L.R. § 5225(b), which allows a Judgment Creditor to commence a special proceeding against "a person in possession or custody of money or other personal property *in which the judgment debtor has an interest,* ... where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee." N.Y. C.P.L.R. § 5225(b)(1997) (emphasis added).

18. Defendant JP Morgan Chase is incorporated under the laws of Delaware, domiciled and headquartered in New York, with offices at One Chase Manhattan Plaza, New York, New York. Defendant JP Morgan Chase has reported to OFAC that it is in possession of Iranian Blocked Assets in which Iran has an interest in the approximate amount set forth in Exhibit D. Defendant JP Morgan Chase is named as a garnishee in this action pursuant to C.P.L.R. § 5225(b). N.Y. C.P.L.R. § 5225(b)(1997).

19. Defendant Citibank is incorporated under the laws of New York, domiciled and headquartered in New York, with offices at 399 Park Avenue, New York, New York.

Defendant Citibank has reported to OFAC that it is in possession of Iranian Blocked Assets in which Iran has an interest in the approximate amount set forth in Exhibit D. Defendant Citibank is named as a garnishee in this action pursuant to C.P.L.R. § 5225(b). N.Y. C.P.L.R. § 5225(b)(1997).

20. Defendant Societe Generale ("SG") is incorporated under the laws of New York, domiciled and headquartered in New York, with offices at 1221 Avenue of the Americas, New York, New York. Defendant SG has reported to OFAC that it is in possession of Iranian Blocked Assets in which Iran has an interest in the approximate amount set forth in Exhibit D. Defendant SG is named as a garnishee in this action pursuant to C.P.L.R. § 5225(b). N.Y. C.P.L.R. § 5225(b)(1997).

21. Defendant SG has reported to OFAC that it is in possession of Iranian Blocked Assets in the approximate amount set forth in Exhibit D of Bank Sepah which was designated for providing support and services to designated Iranian proliferation firms by the Treasury Department pursuant to Executive Order No. 13,382, 70 Fed. Reg 38,567 (June 28, 2005). See Ex. D, p. 22 (Attachment A: Assets blocked by entities in the United States due to a nexus with a designated entity of Iran (January 1, 2007 through June 30, 2008), on service copies to defendants, only the information relating to their institutions is provided). See also Ex. E (U.S. Dept of the Treasury, *Iran's Bank Sepah Designated by Treasury, Sepah Facilitating Iran's Weapons Program*, Press Release, January 9, 2007). The Treasury Department has stated publically that "Bank Sepah is the fifth largest Iranian state-owned bank with more than 290 domestic branches and a presence in Rome, Paris, Frankfurt, and a wholly-owned subsidiary in London." *Id.*

Bank Sepah is "a banking corporation organized under the laws of Iran" and is "wholly owned and controlled by the present government of Iran." *Raji v. Bank Sepah-Iran*, 131 Misc.2d 158, 159, 495 N.Y.S.2d 576 (N.Y. Sup. Ct. 1988); *see also* Bank Sepah Annual Report 2006-2007, pp 54, 60. Plaintiffs are entitled to any funds held for, paid in by, or in accounts in the name of Bank Sepah.

22. Under controlling New York law, Plaintiffs are not required to name the individual remitters of each account to this action; rather, it is the duty of the garnishee (i.e. Defendant Banks) to implead potential adverse claimants and/or the duty of an adverse claimant to seek to intervene. *See e.g., Matter of Ruvolo v. Long Island R.R. Co.*, 256 N.Y.S.2d 279, 288-290 (N.Y. Sup. Ct. 1965); *RCA Corp. v. Tucker*, 696 F.Supp. 845, 850-851 (E.D.N.Y. 1988); *Alliance Bond Fund, Inc. v. Grupo Mexicano De Desarrollo, S.A.*, 190 F.3d 16, 21 (2d Cir. 1999); *Neshewat v. Salem*, 365 F.Supp.2d 508, 524-525 (S.D.N.Y. 2005).

STATEMENT OF FACTS

Plaintiffs' Judgment

23. Plaintiffs are American citizens whose injuries arose from the kidnapping of Mr. Jeremy Levin carried out by the terrorist group Hizbollah in Beirut, Lebanon, in 1984. Plaintiffs brought suit under the Foreign Sovereign Immunities Act ("FSIA") in the United States District Court for the District of Columbia against Iran and various Iranian government entities for their provision of training and other material support and assistance to the Hizbollah terrorists who carried out the kidnapping. *Levin v. Islamic Republic of Iran*, 529 F.Supp.2d 1 (D.D.C. 2007).

24. Judgment debtor Iran is a foreign state designated as a state sponsor of terrorism under the Export Administration Act of 1979, and Plaintiff's judgment against Iran was therefore entered against a "terrorist party" as defined in Section 201 (d)(4) of TRIA.

25. The U.S. District Court for the District of Columbia court found it "well established within the intelligence, academic, and legal communities that Iran, the MOIS, and the IRGC were providing material support and resources to Hizbollah in the early 1980's" and thus that "Iran, the MOIS, and the IRGC, as sponsors of Hizbollah, are responsible for the personal injuries inflicted upon by Hizbollah on hostages and their families, such as Mr. and Dr. Levin." *Levin,* 529 F. Supp. 2d at 15. The Court thus held Iran and the other defendants liable for the torts of false imprisonment, battery, assault, intentional infliction of emotional distress, negligence, and loss of consortium. *Id.* at 17-19.

26. On February 6, 2008, the trial court entered a judgment in favor of the Plaintiffs against Iran and the other defendants, jointly and severally, in the total amount of $28,807,719 in damages. Iran has refused to honor the judgments. *Id.* at 21.

27. Plaintiffs' judgments have been registered in this Court pursuant to 28 U.S.C. § 1963 under case number 09-0732 and therefore have "the same effect as a judgment of" this Court "and may be enforced in like manner." 28 U.S.C. § 1963 (2009).

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Plaintiffs' Writ of Execution

28. On June 19, 2009, pursuant to C.P.L.R. § 5230 (made applicable here by Fed. R. Civ. P. 69), Plaintiffs served a Writ of Execution issued by this Court on the United States Marshal for the Southern District of New York.

29. By serving the Writ of Execution on the U.S. Marshal, Plaintiffs obtained a priority lien on all personal property in New York County subject to execution and attachment in satisfaction of their judgment. *See* David D. Siegel, Practice Commentaries, C.P.L.R. § 5230:1 ("[W]ith the simple act of delivering an execution to the sheriff, the creditor secures a lien on the debtor's personal property in the county even though neither the creditor nor the sheriff know of any.").

IRAN HAS AN INTEREST IN BLOCKED ASSETS HELD BY DEFENDANT BANKS

30. Section 201 of TRIA makes blocked assets of a terrorist state available to satisfy certain judgments:

> Notwithstanding any other provision of law…in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

31. Iran is a foreign state designated as a state sponsor of terrorism under the Export Administration Act of 1979.

32. TRIA defines "blocked assets" as

> any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702) ("IEEPA").
>
> Terrorism Risk Ins. Act of 2002, Pub. L. No. 107-297, §§ 201(a), 201(d)(2)(A),116 Stat. 2322 (2002)..

33. Invoking the authority granted to the President under IEEPA, the President issued Executive Orders No. 12,947, 60 Fed. Reg. 5,079 (January 23, 1995) (Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process), 13,099, 63 Fed. Reg. 45,167 (August 20, 1998)(amending Exec. Order No. 12,947), 13,224, 66 Fed. Reg. 49,079 (September 23, 2001) (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism), and 13,268, 67 Fed. Reg. 44,751 (July 2, 2002) (amending Executive Order No. 13,224, 66 Fed. Reg. 49,079 (September 23, 2001)) for the purpose of blocking property and interests in property, and for prohibiting certain types of transactions with identified terrorists, terrorist groups, and state sponsors of terrorism.

34. In addition, Executive Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005) (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters) was issued to block the property of specially designated Weapons of Mass Destruction ("WMD") *proliferators and members of their support networks*. Executive Order No. 13,382 provides for blocking of all property and interest in property in the United States of

"(a)(i) the persons listed in the Annex to this order;

> (ii) any foreign person d*etermined by the Secretary of State, ... to have engaged, or attempted to engage*, in activities or *transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction* or their means of delivery." Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005).

35. Properties of entities not designated may also be blocked pursuant to Executive Order No. 13,382, which further provides for the blocking of all property and interest in property in the United States of

> "(iii) any person determined by the Secretary of the Treasury, ... to have provided, or attempted to provide, financial, material, technological or other support for ... any activity or transaction described in paragraph (a)(ii)..., or any person whose property and interests in property are blocked pursuant to this order; and
> (iv) any person determined by the Secretary of the Treasury... to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order." Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005).

36. Pursuant to these Executive Orders, OFAC administers various sanctions against terrorists, terrorist groups, and state sponsors of terrorism as well as proliferators of WMD and their supporters, by enforcing prohibitions on transactions and trades and/or blocking property or assets of designated international terrorist organizations, terrorism-supporting countries, proliferators of WMD and/or their supporters.

37. Terrorists, terrorist groups, and state sponsors of terrorism are "designated" by OFAC and placed on OFAC's public list, referred to as "Specially Designated Nationals" ("SDNs"). SDNs are defined as "Individuals and entities which are owned or controlled by, or acting for or on behalf of, the governments of target countries or are associated with international ... terrorism." OFAC Regulations for the Financial Community, http://www.treas.gov/offices/enforcement/ofac/regulations/index.shtmlU.

38. "[P]ersons designated by the Secretary of State under the Weapons of Mass Destruction Trade Control Regulations [31 C.F.R. 539] are listed in a separate appendix to part 539 and are not listed on OFAC's SDN list... Persons whose property and interests in property are blocked under these Regulations are listed on OFAC's SDN list with the identifier "[NPWMD]"." 31 C.F.R. §544 (2009).

39. Subsection 201(a) of Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. § 544, blocks properties of (1) entities listed on Annex of Executive Order No. 13,382, (2) entities determined by Treasury to contribute to WMD proliferators, (3) entities determined by Treasury to support entities contributing to WMD proliferators or entities whose property and interests are blocked by this section, and (4) entities determined by Treasury to be owned or controlled, directly or indirectly by persons whose property and interests are blocked by this section. 31 C.F.R. §544.201(a)(2009).

40. According to OFAC's Terrorist Assets Report 2007 "[t]he blocked asset amounts... represent amounts frozen under U.S. sanctions programs that block all property and interests in property of designated parties" under either the SDN list or WMD list. Office of Foreign Assets Control, U.S. Dep't of the Treasury , Terrorist Assets Rep. (p.2), Calendar Year 2007, Sixteenth Annual Rep. to Cong. on Assets in the U.S. of Terrorist Countries and Int'l Terrorism Program.

41. Placement on the SDN list or the WMD list alerts U.S. entities, especially the financial institutions such as Defendant Banks, that they are prohibited from dealing with the entities and that they must block all property within their possession or control in

which these entities have an interest, and that the blocking must be reported to OFAC. *Id.* Therefore, all properties and interests in properties of the entities on the SDN and WMD lists are blocked within the U.S. jurisdiction. *See* Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005).

42. Defendant Banks have reported to OFAC "blocked assets" as defined above in which the U.S. government has determined Iran has an interest and which are in Defendants' possession. See Ex. B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008.)

43. In its disclosure to Plaintiffs, OFAC has stated that the blocked assets of the Defendant Banks set forth in Ex. D attached hereto, specifically are assets in which Iran has an interest, as that interest is defined by federal law. *Id.* (On service copies to defendants, only the information relating to their institutions is provided).

44. "The term 'interest' is broadly defined in OFAC's sanctions regulations in Chapter V of Title 31 of the Code of Federal Regulations. An interest in property may be direct or indirect and include property interests short of full ownership." Office of Foreign Assets Control, U.S. Dep't of the Treasury , Terrorist Assets Rep. (p.2), Calendar Year 2007, Sixteenth Annual Rep. to Cong. on Assets in the U.S. of Terrorist Countries and Int'l Terrorism Program.

"Interest" as defined under Title 31 of the Code of Federal Regulations, Chapter V, is "an interest of any nature whatsoever, direct or indirect." 31 C.F.R. §500.312 (2009).

45. As provided by 28 U.S.C. §1610 (g) (2009), blocked assets in which Iran has an interest, whether directly or indirectly, are subject to execution or attachment in aid of execution of Plaintiff's judgment.

> "the property of a foreign state against which a judgment is entered under section 1605A [incorporating and replacing section 1607(a)(7)] and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or *is an interest held directly or indirectly in a separate juridical entity*, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, *regardless of*--
>
> (A) the level of economic control over the property by the government of the foreign state;
> (B) whether the profits of the property go to that government;
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
> (D) whether that government is the sole beneficiary in interest of the property; or
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations." (emphasis added) 28 U.S.C. §1610 (g)(2009).

46. Since Defendant Banks are blocking assets that were involved in prohibited transactions by a "designated entity" or SDN in which OFAC has identified to have Iranian interest pursuant to Executive Order 13,382 and other economic sanction programs against Iran, Judgment debtor Iran holds an interest in the funds within Defendant Banks' possession. *See* N.Y. C.P.L.R. § 5225 (1997); 28 U.S.C. 1610(g)(2009); *Weininger v. Castro*, 462 F.Supp.2d 457, 499 (S.D.N.Y. 2006)(holding that under C.P.L.R. § 5225, funds in bank accounts of terrorist party's agencies or instrumentalities, which were subject to TRIA, could be used to satisfy judgments obtained against terrorist party).

47. Accordingly, the Defendant Banks are in possession of assets which are subject to execution or attachment in aid of execution of Plaintiffs' judgment. *See* N.Y. C.P.L.R. § 5225 (1997).

PLAINTIFFS HAVE A SUPERIOR INTEREST IN THE BLOCKED ASSETS HELD BY DEFENDANT BANKS

48. Pursuant to Plaintiffs' subpoena served on OFAC dated September 11, 2008, OFAC has disclosed to Plaintiffs under a Protective Order entered on September 30, 2008, in the District Court of the District of Columbia, that Defendant banks have reported certain assets "blocked due to an apparent nexus with the designated entities of the Islamic Republic of Iran." See Ex B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008); s*ee also* Ex. C (Protective Order); *see also* Ex. D (Attachment A: Assets blocked by entities in the United States due to a nexus with a designated entity of Iran (January 1, 2007 through June 30, 2008), on service copies to defendants, only the information relating to their institutions is provided).

49. Since the assets are blocked "due to an apparent nexus with designated entities of the Islamic Republic of Iran", which OFAC defined such entities as "individuals and entities which are owned or controlled by, or acting for or on behalf of, the Government[] of [Iran] or are associated with international … terrorism", Plaintiffs are entitled to and have a superior interest in these assets compared to Defendant Banks. OFAC Regulations for the Financial Community, http://www.treas.gov/offices/enforcement/ofac/regulations/index.shtmlU.

50. The Iranian Blocked Assets held by Defendant Banks and set forth in Ex. D attached hereto, as well as any additional assets held by the Defendant Banks which have been blocked pursuant to economic sanction regulations against Iran are subject to attachment, execution, and payment to Plaintiffs pursuant to § 201 of TRIA and 28 U.S.C. §1610 (g)(2009) of FSIA.

51. Therefore, Plaintiffs' rights to the blocked assets being held by Defendant Banks are superior to those of the possessing party. *See* N.Y. C.P.L.R. § 5225 (1997); *see also United Int'l Holdings, Inc. v. The Wharf (Holdings) Ltd.*, 988 F. Supp. 367, 374 (S.D.N.Y. 1997)(quoting *Beauvais v. Allegiance Sec., Inc.*, 942 F.2d 838, 840 (2d Cir. 1991)).

52. Plaintiffs' rights are superior to those of both Defendant Banks and the identified remitters of such assets because (1) Defendant Banks are disinterested stakeholders of the funds deposited in their possession, *Morgenthow & Latham v. Bank of N.Y. Co., Inc.*, 836 N.Y.S.2d 579, 580 (N.Y. App. Div. 2007)(citing *Bata Shoe Co. v. Silvestre Segarra e Hijos*, 396 N.Y.S.2d 369 (N.Y. App. Div. 1977)); and (2) the assets blocked under the various economic sanction regulations of the U.S. government outlined above, have been determined by OFAC to be ones in which Iran has an interest. See Ex. B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008).

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CLAIM FOR RELIEF AGAINST DEFENDANTS BANK OF NEW YORK, JP MORGAN CHASE, SOCIETE GENERALE, AND CITIBANK PURSUANT TO C.P.L.R. § 5225

53. Plaintiffs repeat and reallege each of the foregoing allegations with the same force and effect as if they were set forth herein.

54. Plaintiffs are judgment creditors of Iran.

55. Plaintiffs are entitled to enforce their judgment against all assets in which Iran has an interest, direct or indirect, within the United States jurisdiction.

56. The assets held by Defendant Banks and set forth in Ex. D attached hereto are "Iranian Blocked Assets" which have been determined by OFAC to have an apparent connection to Iran and in which Iran has an interest. See Ex. B at p. 2 (Letter from Sean Thornton, General Counsel, U.S. Department of Treasury dated October 6, 2008).

57. Plaintiffs are entitled to a judgment pursuant to C.P.L.R. § 5225 ordering Defendant Banks to convey, assign, and pay to Plaintiffs in satisfaction of their judgment against Iran all right, title, interest, and money in the identified bank accounts set forth in Ex. D (Attachment A: Assets blocked by entities in the United States due to a nexus with a designated entity of Iran (January 1, 2007 through June 30, 2008), on service copies to defendants, only the information relating to their institutions is provided).

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demand a judgment entered in their favor and against Defendant Banks and an order conveying, assigning and directing the payment to plaintiffs in satisfaction of their judgment all right, title, interest and money in the listed bank accounts in possession of Defendant Banks, including specifically:

An order and judgment conveying, assigning and directing the turnover of money to plaintiffs in satisfaction of their judgment as below:

(a) To Bank of New York

At least the amount set forth on Exhibit D held in this bank plus any accrued interest from funds blocked and reported to OFAC as set forth in Ex. D, p. 6 (on service copies to defendants, only the information relating to their institutions is provided).

(b) To JPMorgan Chase

At least the amount set forth on Exhibit D held in this bank plus any accrued interest from funds blocked and reported to OFAC as set forth in Ex. D, pp. 16-17 (on service copies to defendants, only the information relating to their institutions is provided).

(c) To Societe Generale

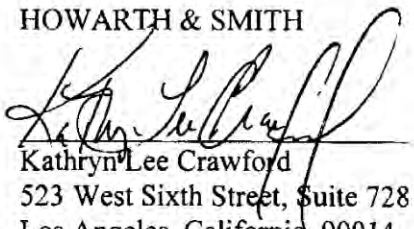
At least the amount set forth on Exhibit D held in this bank plus any accrued interest from funds blocked and reported to OFAC as set forth in Ex. D, p. 22 (on service copies to defendants, only the information relating to their institutions is provided).

(d) To Citibank

At least the amount set forth on Exhibit D held in this bank plus any accrued interest from funds blocked and reported to OFAC as set forth in Ex. D, pp. 8-10 (on service copies to defendants, only the information relating to their institutions is provided).

Dated: Los Angeles, California
June 22, 2009

HOWARTH & SMITH

By: 

Kathryn Lee Crawford
523 West Sixth Street, Suite 728
Los Angeles, California 90014
(213) 955-9400

Attorney for Plaintiffs/Judgment Creditors

Annex 28

***Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran and Iranian Ministry of Information and Security,* U.S. District Court for the District of Columbia, Order Granting Motion to Enter Default Judgment and to Take Judicial Notice (of the findings of facts and conclusions of law in the Peterson judgment of 30 May 2003 as fully applicable to the matter), 1 February 2010, Case No. 08-cv-531**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF ANOTHNY K. BROWN, et al.,	)	
Plaintiffs,	)	
v.	)	08-cv-531 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' SEDOND MOTION TO ENTER DEFAULT JUDGMENT AND TO TAKE JUDICIAL NOTICE

In Plaintiffs' Second Motion [18] to Enter Default Judgment and to Take Judicial Notice, plaintiffs request that the Court take judicial notice of the May 30, 2003 Memorandum Opinion in the consolidated cases of *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094, and *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684, and further request that the Court, on the basis of that Opinion, enter default judgment as to liability against all defendants. "'It is settled law that the court may take judicial notice of other cases including the same subject matter or questions of a related nature between the same parties.'" *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (quoting *Fletcher v. Evening Star Newspaper Co.*, 133 F.2d 395, 395 (D.C. Cir. 1942)). As this Court itself has noted in a related case, "'[a] court may take judicial notice of related proceedings and records in cases before the same court.'" *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 262-63 (D.D.C. Dec. 22, 2006) (Lamberth, J.) (quoting *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 109 n.6 (D.D.C. 2005)).

The subject matter of this case—the terrorist attack upon the headquarters building of the 24th Marine Amphibious Unit in Beirut, Lebanon on October 23, 1983—and the parties—the

Islamic Republic of Iran and the Iranian Ministry of Information and Security—are the same as those of *Peterson* and *Boulos*. Judicial notice of *Peterson* and *Boulos* in this case is therefore appropriate, just as it has been appropriate in related cases before this Court. *See, e.g.*, *Valore v. Islamic Republic of Iran*, 478 F. Supp. 2d 101, 103 (D.D.C. 2007).

Plaintiffs further request that the Court direct that this matter be assigned for the taking of damages evidence by and appoint Alan Balaran as special master to take such evidence. This the Court cannot yet do. The Court will issue a forthcoming order on the subject of the appointment of Mr. Balaran as special master.

Accordingly, it is hereby ORDERED

that the Motion is GRANTED IN PART and DENIED IN PART without prejudice, as per the discussion above;

that the Court takes judicial notice of the May 30, 2003 Memorandum Opinion in the consolidated cases of *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094, and *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684, as fully applicable to this matter; and

that judgment be and is entered on behalf of all plaintiffs as to all issues of liability against all defendants.

SO ORDERED this 1st day of February 2010.

/s/
Royce C. Lamberth
Chief Judge

Annex 29

***Davis, et al., v. Islamic Republic of Iran, et al.,* U.S. District Court for the District of Columbia, (Liability – taking judicial notice of the Peterson judgment of 30 May 2003), 1 February 2010, Case No. 07-cv-1302**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAROLYN DAVIS, et al.,	)	
Plaintiffs,	)	
v.	)	07-cv-1302 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)	
Defendants.	)	

ORDER GRANTING PLAINTIFFS' MOTION REQUESTING JUDICIAL NOTICE OF DECISION OF MAY 30, 2003

In Plaintiffs' Motion [26] Requesting Judicial Notice of Decision of May 30, 2003, plaintiffs request that the Court take judicial notice of the May 30, 2003 Memorandum Opinion in the consolidated cases of *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094, and *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684, and further request that the Court, on the basis of that Opinion, enter default judgment as to liability against all defendants. "'It is settled law that the court may take judicial notice of other cases including the same subject matter or questions of a related nature between the same parties.'" *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (quoting *Fletcher v. Evening Star Newspaper Co.*, 133 F.2d 395, 395 (D.C. Cir. 1942)). As this Court itself has noted in a related case, "'[a] court may take judicial notice of related proceedings and records in cases before the same court.'" *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 262-63 (D.D.C. Dec. 22, 2006) (Lamberth, J.) (quoting *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 109 n.6 (D.D.C. 2005)).

The subject matter of this case—the terrorist attack upon the headquarters building of the 24th Marine Amphibious Unit in Beirut, Lebanon on October 23, 1983—and the parties—the

Islamic Republic of Iran and the Iranian Ministry of Information and Security—are the same as those of *Peterson* and *Boulos*. Judicial notice of *Peterson* and *Boulos* in this case is therefore appropriate, just as it has been appropriate in related cases before this Court. *See, e.g.*, *Valore v. Islamic Republic of Iran*, 478 F. Supp. 2d 101, 103 (D.D.C. 2007). Accordingly, it is hereby ORDERED

that the Motion is GRANTED;

that the Court takes judicial notice of the May 30, 2003 Memorandum Opinion in the consolidated cases of *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094, and *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684, as fully applicable to this matter; and

that judgment be and is entered on behalf of all plaintiffs as to all issues of liability against all defendants.

SO ORDERED this 1st day of February 2010.

/s/
Royce C. Lamberth
Chief Judge

Annex 30

***Valore, et al. v. The Islamic Republic of Iran, et al., Arnold (Estate of James Silvia), et al. v. The Islamic Republic of Iran, et al., Spencer, et al. v. The Islamic Republic of Iran, et al., and Bonk, et al. v. The Islamic Republic of Iran, et al. (consolidated),* U.S. District Court for the District of Columbia, Memorandum Opinion (Liability and Damages), 31 March 2010, 700 F. Supp. 2d 52 5 (D.D.C. 2010), Cases No. 03-cv-1959, 06-cv-516, 06-cv-750, and 08-cv-1273**

Excerpts: pp. 1-8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TERANCE J. VALORE, et al.,	)	
	)	Consolidated Actions:
Plaintiffs,	)	03-cv-1959 (RCL)
	)	06-cv-516 (RCL)
v.	)	06-cv-750 (RCL)
	)	08-cv-1273 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

I. Introduction.

This memorandum opinion accompanies the final judgments in the recently consolidated cases of *Valore v. Islamic Republic of Iran*, No. 03-cv-1959, *Arnold v. Islamic Republic of Iran*, No. 06-cv-516, *Spencer v. Islamic Republic of Iran*, No. 06-cv-750, and *Bonk v. Islamic Republic of Iran*, No. 08-cv-1273. These cases all arise out of the October 23, 1983, bombing of the United States Marine barracks in Beirut Lebanon ("the Beirut bombing"), where a suicide bomber murdered 241 American military servicemen in the most deadly state-sponsored terrorist attack upon Americans until the tragic attacks on September 11, 2001.

The Court will first discuss the complicated background of these cases: the relationship between these cases and the previously decided consolidated cases of *Peterson v. Islamic Republic of Iran* and *Boulos v. Islamic Republic of Iran* (collectively, "*Peterson*"), recent changes made to the Foreign Sovereign Immunities Act (FSIA), the procedural approach by which recently amended FSIA provisions apply, the judicial notice taken of findings and conclusions made in *Peterson* and the subsequent entry of default judgments in each case, and a summary of the claims made in each case. Second, the Court will make findings of fact for

these consolidated cases. Third, the Court will discuss, relative to each previously separate case, the Court's personal and subject-matter jurisdiction. Fourth, the Court will discuss defendants' liability under both the federal cause of action created by the Foreign Sovereign Immunities Act and causes of action under District of Columbia law. Finally, the Court will award compensatory and punitive damages as appropriate.

II. Background.

A. Relationship to *Peterson*, Recent Changes to the FSIA, and Plaintiffs' Procedural Approach.

All plaintiffs in these consolidated cases originally brought their individual actions against defendants under 28 U.S.C. § 1605(a)(7), the former state-sponsor-of-terrorism exception to the general rule of sovereign immunity enumerated in the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602–1611. Section 1605(a)(7) "was 'merely a jurisdiction conferring provision,' and therefore did not create an independent federal cause of action against a foreign state or its agents." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31 (D.D.C. 2009) (quoting *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1027, 1032 (D.C. Cir. 2007)) (Lamberth, J.). It merely opened the door to plaintiffs seeking to bring suit in federal court against foreign sovereigns for terrorism-related claims, which had to be based on state tort law. *See id.* at 40–48 (providing a historical overview of the FSIA terrorism exception) Further, the FSIA did not permit the awarding of punitive damages against foreign states themselves. *Id.* at 48.

These cases come to the Court following final judgment in *Peterson*. *See* 264 F. Supp. 2d 46 (D.D.C. 2003) (Lamberth, J.) [hereinafter *Peterson I*]. That case established the liability of Iran and MOIS in the terrorist attack out of which these cases also arise, but did so under § 1605(a)(7), thus reaching "inconsistent and varied result[s]" when various states' tort laws

differed. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 59; *see Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007) (Lamberth, J.) [hereinafter *Peterson II*]. Congress responded to this inconsistency and the unavailability of punitive damages by replacing § 1605(a)(7) with § 1605A, a new terrorism exception that provides an independent federal cause of action and makes punitive damages available to plaintiffs. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 58–61 (discussing repeal of § 1605(a)(7) and enactment of § 1605A). Plaintiffs now seek to take advantage of these changes.

Individuals seeking to take advantage of this new cause of action and punitive-damages allowance must proceed under one of three procedural approaches, which are laid out in part in the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083(2)–(3), 112 Stat. 3, 342–43. *See generally In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 62–65 (discussing retroactive application of § 1605A to cases previously filed under § 1605(a)(7)). First, potential plaintiffs may pursue a case related to a "prior action":

> With respect to any action that was brought under section 1605(a)(7) of title 28, United States Code . . . before [Jan. 28, 2008,] relied upon . . . such provision as creating a cause of action, has been adversely affected on the grounds that [such] provision[] fail[ed] to create a cause of action against the state, and as of such date . . . is before the courts in any form . . . , that action, and any judgment in the action[,] shall . . . be given effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code.

§ 1083(c)(2)(A). Second and alternatively, potential plaintiffs may pursue a case related to a "related action":

> If an action arising out of an act or incident has been timely commenced under section 1605(a)(7) of title 28, United States Code, . . . any other action arising out of the same act or incident may be brought under section 1605A of title 28, United States Code . . . .

§ 1083(c)(3). Third and finally, potential plaintiffs may pursue a stand-alone action, i.e., one not related to any action previously filed under § 1605(a)(7), such that retroactive application of § 1605A is not necessary.

Plaintiffs in these cases all proceed under the second approach. Actions timely commenced under § 1605(a)(7) in this Court that relate to the Beirut bombing include *Peterson v. Islamic Republic of Iran*, No. 01-cv-2094; *Boulos v. Islamic Republic of Iran*, No. 01-cv-2684; *Valore v. Islamic Republic of Iran*, No. 03-cv-1959; *Bland v. Islamic Republic of Iran*, No. 05-cv-2124; *Arnold v. Islamic Republic of Iran*, No. 06-cv-516; *Murphy v. Islamic Republic of Iran*, No. 06-cv-596; *O'Brien v. Islamic Republic of Iran*, No. 06-cv-690; *Spencer v. Islamic Republic of Iran*, No. 06-cv-750; and *Davis v. Islamic Republic of Iran*, No. 07-cv-1302. The consolidated cases before the Court today, therefore, are related to several related cases. By the plain terms of § 1083(c)(3), the plaintiffs in these consolidated cases may therefore proceed under § 1605A.

B. Default Judgment and Judicial Notice of Findings of Fact and Conclusions of Law from *Peterson*.

In each of the cases now consolidated, this Court took judicial notice of the findings of fact and conclusions of law made in *Peterson*. In the orders taking such notice, the Court also issued default judgments against both defendants. Plaintiffs had established their right to relief "by evidence satisfactory to the court," 28 U.S.C. § 1608(e), through "uncontroverted factual allegations, which are supported by . . . documentary and affidavit evidence," *Int'l Road Fed'n v. Embassy of the Democratic Republic of the Congo*, 131 F. Supp. 2d 248, 252 n.4 (D.D.C. 2001) (quotation omitted).

A court may take judicial notice of any fact "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot

reasonably be questioned." FED. R. EVID. 201(b). Under Rule 201(b), courts generally may take judicial notice of court records. *See* 21B CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, JR., FEDERAL PRACTICE & PROCEDURE § 5106.4; *see also Booth v. Fletcher*, 101 F.2d 676, 679 n.2 (D.C. Cir. 1938) ("A court may take judicial notice of, and give effect to, its own records in another but interrelated proceeding . . . ."). Indeed, as has been noted in several other FSIA cases brought in this District, "this Court 'may take judicial notice of related proceedings and records in cases before the same court.'" *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43, 50–51 (D.D.C. 2009) (quoting *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d. 229, 267 (D.D.C. 2006) (Lamberth, J.) [hereinafter *Heiser I*]). At issue is the effect of such notice.

Although a court clearly may judicially notice its findings of facts and conclusions of law in related cases, this Circuit has not directly considered whether and under what circumstances a court may judicially notice the *truth* of such findings and conclusions. Circuits that have addressed this question have concluded that "courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed"; but because "it is conceivable that a finding of fact may satisfy the indisputability requirement," these courts have not adopted a per se rule against such notice. *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 829–30 (5th Cir. 1998); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1114 n.5 (9th Cir. 2003); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc.*, 146 F. 3d 66, 70 (2d Cir. 1998); *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *Holloway v. Lockhart*, 813 F.2d 874, 878–79 (8th Cir. 1987). *See generally* 21B WRIGHT & GRAHAM, *supra*, § 5106.4 ("While judicial findings of fact may be more reliable than other facts found in the file, this does not make them indisputable[.]").

This District has followed a similar approach in FSIA cases: judicial notice of truth of findings and conclusions is not prohibited per se, but is inappropriate absent some particular indicia of indisputability. Here, there are no such indicia. With "defendants having failed to enter an appearance," *Peterson* was decided without the full benefits of adversarial litigation, and its findings thus lack the absolute certainty with which they might otherwise be afforded. *Peterson I*, 264 F. Supp. 2d at 49. Just as "findings of fact made during this type of one-sided hearing should not be given a preclusive effect," *Weinstein v. Islamic Republic of Iran*, 175 F. Supp. 2d 13, 20 (D.D.C. 2001) (Lamberth, J.), they also should not be assumed true beyond reasonable dispute. Moreover, because "default judgments under the FSIA require additional findings than in the case of ordinary default judgments," *id.* at 19–20, the court should endeavor to make such additional findings in each case.

The taking of judicial notice of the *Peterson* opinion, therefore, does not conclusively establish the facts found in *Peterson* for, or the liability of the defendants in, these consolidated cases. But "the FSIA does not require this Court to relitigate issues that have already been settled" in previous decisions. *Brewer*, 664 F. Supp. 2d at 54. Instead, the Court may review evidence considered in an opinion that is judicially noticed, without necessitating the re-presentment of such evidence. *Heiser I*, 466 F. Supp. 2d at 264 (reconsidering evidence presented in *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40 (2006) (Lamberth, J.)). In rendering default judgment against defendants, the Court was therefore required to, and did, find facts and make legal conclusions anew. Below, the Court expounds on those findings and conclusions.

C. Summary of Plaintiffs' Claims.

In these consolidated cases, plaintiffs bring several types of claims, some under the FSIA-created cause of action and some under District of Columbia law. Under the FSIA,

servicemen who survived the attack have brought claims of assault, battery, and intentional infliction of emotional distress, seeking damages for pain and suffering and economic losses;[1] the estates of servicemen killed in the attack ("decedents") have brought survival claims, seeking economic damages for pain and suffering by decedents before death;[2] estates of decedents have brought claims for wrongful death, seeking to recover for decedents' lost wages and earnings they would have earned but for their deaths;[3] and family members of victims have brought claims for intentional infliction of emotional distress, seeking solatium.[4] Under District of

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[1] These plaintiffs are: from *Valore*, Dennis Jack Anderson, Pedro Alvarado, Jr., Timothy Brooks, Floyd Carpenter, Michael Harris, Donald R. Pontillo, John E. Selbe, Willy G. Thompson, and Terance J. Valore; and from *Arnold*, Neale Scott Bolen. There are no such plaintiffs in *Spencer* or *Bonk*.

[2] These plaintiffs are: from *Arnold*, Estate of Moses Arnold, Jr.; and from *Spencer*, Estate of James Silvia. There are no such plaintiffs in *Valore* or *Bonk*.

Although plaintiffs in *Spencer* plead their survival claim under state law and have not amended their complaint to allege such claim under the FSIA-created cause of action, they received leave of Court to proceed under § 1605A without amending their complaint. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 97 (D.D.C. 2009) (Lamberth, C.J.). The Court therefore construes the complaint to bring this survival claim under the FSIA-created cause of action.

[3] These plaintiffs are: from *Arnold*, Estate of Moses Arnold, Jr.; and from *Spencer*, Estate of James Silva. There are no such plaintiffs in *Valore* or *Bonk*. As noted *supra* note 2, the Court construes plaintiffs' claim in *Spencer* as brought under the FSIA-created cause of action.

[4] These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., Estate of James Yarber, Angel Alvarado, Andres Alvarado Tull, Geraldo Alvarado, Grisselle Alvarado, Luis Alvarado, Luisa Alvarado, Maria Alvarado, Marta Alvarado, Minerva Alvarado, Yolanda Alvarado, Zoraida Alvarado, Cheryl Bass, Edward J. Brooks, Patricia A. Brooks, Wanda Ford, Bennie Harris, Rose Harris, Marcy Lynn Parson, Douglas Pontillo, Leonora Pontillo, Eloise F. Selbe, Don Selbe, James Selbe, Belinda Skarka, Allison Thompson, Isaline Thompson, Johnny Thompson, Deborah True, Janice Valore, Orlando M. Valore, Jr., and Orlando Michael Valore, Sr.; from *Arnold*, Lolita M. Arnold, Estate of Moses Arnold, Jr., Lisa Ann Beck, Betty J. Bolen, Keith Edwin Bolen, Sheldon H. Bolen, and Sharla M. Korz; from *Spencer*, Lynne Michol Spencer; and from *Bonk*, Catherine Bonk, Kevin Bonk, Thomas Bonk, John Bonk, Sr., Danielle DiGiovanni, Lisa DiGiovanni, Marion DiGiovanni, Robert DiGiovanni, Sherry Lynn Fiedler, Robert Fluegel, Thomas A. Fluegel, Marilou Fluegel, Evans Hairston, Felicia Hairston,

Columbia law, estates of decedents have brought survival claims, seeking economic damages for pain and suffering by decedents before death;[5] and estates of decedents have brought wrongful-death claims, seeking to recover for decedents' lost wages and earnings they would have earned but for their deaths.[6] Finally, all plaintiffs have sought punitive damages now available under the FSIA.

Julia Bell Hairston, Henry Durban Hukill, Mark Andrew Hukill, Matthew Scott Hukill, Melissa Hukill, Meredith Ann Hukill, Mitchell Charles Hukill, Monte Hukill, Virginia Ellen Hukill, Catherine Bonk Hunt, Storm Jones, Penni Joyce, Jeff Kirkwood, Shirley Kirkwood, Carl Arnold Kirkwood, Jr., Carl Kirkwood, Sr., Patricia Kronenbitter, Kris Laise, Bill Laise, Betty Laise, James Macroglou, Lorraine Macroglou, Bill Macroglou, Kathy McDonald, Edward W. McDonough, Sean McDonough, Edward Joseph McDonough, Deborah Spencer Rhosto, Estate of Rose Rotondo, Estate of Luis Rotondo, Estate of Phyllis Santoserre, Robert Simpson, Renee Eileen Simpson, Anna Marie Simpson, Larry H. Simpson, Sr., and Sally Jo Wirick.

Although plaintiffs in *Bonk* pled that they are "legally entitled to assert a claim under the District of Columbia Wrongful Death Act [and] the District of Columbia Survival Act," (*Bonk* Compl. ¶ 1), they do not make any claims under either Act. The Court notes that such claims have already successfully been made in *Peterson* by estates of which these plaintiffs are beneficiaries. *See Peterson II*,. 515 F. Supp. 2d at 38–39. The Court therefore has not considered any potential claim under either Act in *Bonk*.

[5] These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate Of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., and Estate of James Yarber. There are no such plaintiffs in *Arnold*, *Spencer*, or *Bonk*.

Although plaintiffs in *Valore* amended their complaint to bring some claims under the FSIA-created cause of action, they continue to press their survival claims under District of Columbia law. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 100 (noting that the amended "complaint is very similar to the original complaint in the sense that it continues to rely on District Columbia law for . . . survivorship claims.").

[6] These plaintiffs are: from *Valore*, Estate of David L. Battle, Estate Of Matilde Hernandez, Jr., Estate of John Muffler, Estate of John Jay Tishmack, Estate of Leonard Warren Walker, Estate of Walter Emerson Wint, Jr., and Estate of James Yarber. There are no such plaintiffs in *Arnold*, *Spencer*, or *Bonk*.

Although plaintiffs in *Valore* amended their complaint to bring some claims under the FSIA-created cause of action, they continue to press their wrongful-death claims under District of Columbia law. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 100

Annex 31

***Murphy, et al. v. Islamic Republic of Iran, et al.*, U.S. District Court for the District of Columbia, Memorandum Opinion (Liability and Damages), 24 September 2010, Case No. 06-cv-596**

Excerpts: pp. 1-7 & pp. 35-48

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELIZABETH MURPHY, et al.,	)	
Plaintiffs,	)	
v.	)	06-cv-596 (RCL)
ISLAMIC REPUBLIC OF IRAN, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

I. Introduction.

This case arises out of the October 23, 1983, bombing of the United States Marine barracks in Beirut, Lebanon ("the Beirut bombing"), where a suicide bomber murdered 241 American military servicemen in the most deadly state-sponsored terrorist attack upon Americans until the tragic attacks on September 11, 2001. The Court will first discuss the background of this case: the commencement of this case by plaintiffs, the later inclusion of plaintiffs in intervention, the retroactive application of recent changes to the Foreign Sovereign Immunities Act (FSIA), the judicial notice taken of findings and conclusions made in a related case, the entry of default judgment, and a summary of the claims made in this case. Second, the Court will make findings of fact. Third, the Court will discuss the Court's personal and subject-matter jurisdiction. Fourth, the Court will discuss defendants' liability under the federal cause of action created by the Foreign Sovereign Immunities Act. Finally, the Court will award compensatory and punitive damages as appropriate.

II. Background.

This case contains two complaints: one by the plaintiffs, the other by the plaintiffs in intervention (also referred to as "intervenor plaintiffs" or "intervenors"). The terrorism exception to the FSIA, as recently amended, applies retroactively to claims made by both plaintiffs and intervenors. The Court has taken judicial notice of the findings and conclusions entered in a related case. The Court will enter default judgment against defendants and in favor of all plaintiffs and intervenors. Plaintiffs and intervenors have brought various claims of wrongful death, assault, battery, and intentional infliction of emotional distress (IIED), for which they seek compensatory and punitive damages.

A. Retroactive Application of Recently Amended Provisions of the FSIA to Plaintiffs and Intervenors.

Plaintiffs originally brought this action against defendants under 28 U.S.C. § 1605(a)(7), the former state-sponsor-of-terrorism exception to the general rule of sovereign immunity enumerated in the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602–1611. *See* Compl., Mar. 31, 2006, ECF No. 1. Section 1605(a)(7) "was 'merely a jurisdiction conferring provision,' and therefore did not create an independent federal cause of action against a foreign state or its agents." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31 (D.D.C. 2009) (Lamberth, J.) (quoting *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1027, 1032 (D.C. Cir. 2007)). It merely opened the door to plaintiffs seeking to bring suit in federal court against foreign sovereigns for terrorism-related claims, which had to be based on state tort law. *Id.* at 40–48 (providing a historical overview of the FSIA terrorism exception) Further, the FSIA did not permit the awarding of punitive damages against foreign states themselves. *Id.* at 48.

This case comes to the Court following final judgment in *Peterson v. Islamic Republic of Iran*. *See Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007) (Lamberth, J.) [hereinafter *Peterson II*] (final judgment); *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003) (Lamberth, J.) [hereinafter *Peterson I*] (default judgment). *Peterson* established the liability of Iran and MOIS in the terrorist attack out of which this case also arise, but did so under § 1605(a)(7), thus reaching "inconsistent and varied result[s]" when various states' tort laws differed. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 59; Congress responded to this inconsistency and the unavailability of punitive damages by replacing § 1605(a)(7) with § 1605A, a new terrorism exception that provides an independent federal cause of action and makes punitive damages available to plaintiffs. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 58–61 (discussing repeal of § 1605(a)(7) and enactment of § 1605A). Plaintiffs now seek to retroactively take advantage of these changes. As do plaintiffs in intervention; Intervenors filed their complaint in intervention stating claims only under § 1605A, but they too must satisfy certain procedural requirements to take advantage of § 1605A, enacted in 2008, to the Beirut Bombing, which occurred in 1983.

Parties seeking to take advantage of this new federal cause of action and punitive-damages allowance must proceed under one of three procedural approaches, which are laid out in part in the National Defense Authorization Act for Fiscal Year 2008 (2008 NDAA), Pub. L. No. 110-181, § 1083(2)–(3), 112 Stat. 3, 342–43 (2008). *See generally In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 62–65). These three approaches are prior actions, related actions, or stand-alone actions.

First, § 1605A may apply to a "prior action," which is one that (1) "was brought under section 1605(a)(7) of title 28, United States Code . . . before the date of the enactment of this

Act," the 2008 NDAA, January 28, 2008, § 1083(c)(2)(A)(i); (2) "relied upon . . . such provision as creating a cause of action," § 1083(c)(2)(A)(ii); (3) "has been adversely affected on the grounds that [such] provision[] fail[ed] to create a cause of action against the state," § 1083(c)(2)(A)(iii); and (4) "as of such date of enactment, [was] before the courts in any form," § 1083(c)(2)(A)(iv). Second and alternatively, § 1605A may apply to a "related action," which is one "arising out of the same act or incident" as "an action arising out of an act or incident [that] has been timely commenced under section 1605(a)(7) of title 28, United States Code." § 1083(c)(3). Third and finally, potential plaintiffs may pursue a stand-alone action, which is one in which § 1605A need not retroactively apply to some past attack. Plaintiffs and intervenors in this case proceed under the second approach. This case is related to, among other cases, *Valore v. Islamic Republic of Iran*, a consolidation of four cases, all of which were timely commenced under § 1605(a)(7) and which arose out of the same act or incident as this case: the Beirut Bombing. *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 57 (D.D.C. 2010) (Lamberth, C.J.) ("All plaintiffs in this case originally brought their individual actions against defendants under 28 U.S.C. § 1605(a)(7) . . . .").

To secure retroactive application of § 1605A, a party in a related action must seek such retroactivity "not later than the latter of 60 days after the date of the entry of judgment in the original action"—the one to which the related action is related—or January 28, 2008—the date of the enactment of the 2008 NDAA. § 1083(c)(3). Plaintiffs sought retroactive application through their Motion for Leave to Amend Complaint, ECF No. 46, which was filed on February 26, 2010. Plaintiffs in intervention sought retroactive application by filing their Complaint in Intervention, ECF No. 31, on November 17, 2008. Final judgment in *Valore* was entered on March 31, 2010. *See* Order & J., *Valore*, No. 03-cv-1959 (D.D.C. Mar. 31, 2010), ECF No. 60.

Both plaintiffs and intervenors therefore commenced their respective portions of this action well before 60 days after the entry of final judgment in *Valore*. The Court may therefore apply § 1605A to all claims in this case, and has allowed plaintiffs to amend their complaint and intervenors to intervene. Order Granting Mot. for Leave to Am. Compl., Apr. 13, 2010, ECF No. 52; Order, Nov. 17, 2008, ECF No. 30; *see* Am. Compl. for Dam., Apr. 13, 2010, ECF No. 54 [hereinafter Pls.' Compl.]; Compl. in Intervention, Nov. 17, 2008, ECF No. 30 [hereinafter Ints.' Compl.].

B. Judicial Notice and Default Judgment.

The Court has taken judicial notice of the findings of fact and conclusions of law made in *Peterson*, which also arose out of the Beirut Bombing; in the orders taking such notice, the Court also issued default judgments against both defendants, which failed to appear. Order Granting in Part and Finding as Moot in Part Mot. for Judicial Notice of Findings of Fact and Conclusions of Law on Liability of Defs., Apr. 13, 2010, ECF No. 53; Order, Oct. 2, 2007, ECF No. 27. Plaintiffs and intervenors had both established their right to relief "by evidence satisfactory to the court," 28 U.S.C. § 1608(e), through "uncontroverted factual allegations, which are supported by . . . documentary and affidavit evidence," *Int'l Road Fed'n v. Embassy of the Democratic Republic of the Congo*, 131 F. Supp. 2d 248, 252 n.4 (D.D.C. 2001) (quotation omitted).

A court may take judicial notice of any fact "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Under Rule 201(b), courts generally may take judicial notice of court records. *See* 21B Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5106.4; *see also Booth v. Fletcher*, 101 F.2d 676, 679 n.2 (D.C. Cir. 1938) ("A court may take judicial notice of, and give effect to, its own records in another but

interrelated proceeding . . . ."). Indeed, as has been noted in several other FSIA cases brought in this District, "this Court 'may take judicial notice of related proceedings and records in cases before the same court.'" *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43, 50–51 (D.D.C. 2009) (quoting *Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d. 229, 267 (D.D.C. 2006) (Lamberth, J.) [hereinafter *Heiser I*]). At issue is the effect of such notice.

Although a court clearly may judicially notice its findings of facts and conclusions of law in related cases, this Circuit has not directly considered whether and under what circumstances a court may judicially notice the *truth* of such findings and conclusions. Circuits that have addressed this question have concluded that "courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed"; but because "it is conceivable that a finding of fact may satisfy the indisputability requirement," these courts have not adopted a per se rule against such notice. *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 829–30 (5th Cir. 1998); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1114 n.5 (9th Cir. 2003); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc.*, 146 F. 3d 66, 70 (2d Cir. 1998); *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *Holloway v. Lockhart*, 813 F.2d 874, 878–79 (8th Cir. 1987). *See generally* 21B Wright & Graham, *supra*, § 5106.4 ("While judicial findings of fact may be more reliable than other facts found in the file, this does not make them indisputable . . . .").

This District has followed a similar approach in FSIA cases: judicial notice of the truth of findings and conclusions is not prohibited per se, but is inappropriate absent some particular indicia of indisputability. Here, there are no such indicia. With "defendants having failed to enter an appearance," *Peterson* was decided without the full benefits of adversarial litigation, and

its findings thus lack the absolute certainty with which they might otherwise be afforded. *Peterson I*, 264 F. Supp. 2d at 49. Just as "findings of fact made during this type of one-sided hearing should not be given a preclusive effect," *Weinstein v. Islamic Republic of Iran*, 175 F. Supp. 2d 13, 20 (D.D.C. 2001) (Lamberth, J.), they also should not be assumed true beyond reasonable dispute. Moreover, because "default judgments under the FSIA require additional findings than in the case of ordinary default judgments," *id.* at 19–20, the court should endeavor to make such additional findings in each case.

The taking of judicial notice of the *Peterson* opinion, therefore, does not conclusively establish the facts found in *Peterson* for, or the liability of the defendants in, this case. But "the FSIA does not require this Court to relitigate issues that have already been settled" in previous decisions. *Brewer*, 664 F. Supp. 2d at 54. Instead, the Court may review evidence considered in an opinion that is judicially noticed, without necessitating the re-presentment of such evidence. *Heiser I*, 466 F. Supp. 2d at 264 (reconsidering evidence presented in *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40 (2006) (Lamberth, J.)). In rendering default judgment against defendants, the Court was therefore required to, and did, find facts and make legal conclusions anew. Below, the Court expounds on those findings and conclusions.

C. Summary of Plaintiffs' and Intervenors' Claims.

Servicemen Armando Ybarra and John L'Heureux who survived the attack have brought claims of assault, battery, and intentional infliction of emotional distress, seeking damages for pain and suffering and economic losses. The estates of one serviceman killed in the attack—Terrance Rick ("decedent"), represented by Elizabeth Murphy—has brought a claim for wrongful death, seeking to recover decedent's lost wages and earnings. Finally, family members of servicemen-victims—Elizabeth Murphy, Bryan Harris, Mary E. Wells, Kerry M. L'Heureux,

case are presumed to recover as a full-blood sibling would." *Peterson II*, 515 F. Supp. 2d at 52. All family-member plaintiffs and intervenors satisfy this requirement as either parents of siblings of servicemen.[5] Concerning the presence requirement, the Restatement's caveat "suggests that . . . '[i]f the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which is not present, no essential reason of logic or policy prevents liability.'" *Heiser II*, 659 F. Supp. 2d at 27 (quoting Dan B. Dobbs, The Law of Torts § 307, at 834 (2000)). As this Court has noted, "[t]errorism, unique among the types of tortious activities in both its extreme methods and aims, passes this test easily." *Id.* One therefore need not be present at the time of a terrorist attack upon a third person to recover for severe emotional injuries suffered as a result. Family-member plaintiffs and intervenors, although not present at the Beirut bombing, may therefore recover for the emotional injuries they suffered as a result of that attack.

D. Jurisdiction.

In satisfaction of the final element of the FSIA-created cause of action, the Court has jurisdiction over this case, *see* discussion *supra* Part IV., for money damages, *see* discussion *infra* Part VI.

E. Conclusions Concerning Liability.

In this case, both defendants are considered a foreign state and were and are designated state sponsors of terrorism at all times and for reasons giving rise to liability under the FSIA. Additionally, the bases for the alleged liability of these defendants are actions of their officials, employees, and agents. Defendants are therefore subject to liability under the FSIA-created

[5] Although the Court has no occasion in this case to expand the immediate-family requirement to include non-immediate family members, the Court notes that is has been so expanded in a similar case. *See Valore*, 700 F. Supp. 2d at 79.

cause of action. Further, plaintiffs and intervenors all are or were nationals of the United States. Plaintiffs therefore fall into a class of individuals to whom defendants may be liable. Finally, though not liable for torture, defendants are liable for extrajudicial killing and the provision of material support and resources for such killing, which was committed by officials, employees, and agents of defendants; which caused injury under several theories of liability; and for which the Court has jurisdiction for money damages. Therefore, plaintiffs and intervenors may recover the appropriate amount of damages as determined by the Court *infra* Part VI.

VI. Damages.

The Court hereby adopts, just as it did in *Peterson*, all facts found and recommendations made by the special masters relating to all plaintiffs and intervenors in this case, except where recommendations as to family-member plaintiffs or intervenors deviate from the damages framework, discussed below. *Peterson II*, 515 F. Supp. 2d at 52–53. Any such deviations "shall be altered so as to conform with the respective award amounts set forth" in the framework, unless otherwise noted. *Id.* at 53.

A. Damages Available.

Damages available under the FSIA-created cause of action "include economic damages, solatium, pain and suffering, and punitive damages." § 1605A(c). Accordingly, those who survived the attack can recover damages for their pain and suffering, as well as any other economic losses caused by their injuries; estates of those who did not survive can recover economic losses stemming from wrongful death of the decedent; family members can recover solatium for their emotional injury; and plaintiffs who have requested them can recover punitive damages.

"To obtain damages against defendants in an FSIA action, the plaintiff must prove that the consequences of the defendants' conduct were 'reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this [Circuit's] application of the American rule on damages.'" *Salazar*, 370 F. Supp. 2d at 115–16 (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C. Cir. 2003) (internal quotations omitted)). As discussed above, plaintiffs have proven that the defendants' commission of acts of extrajudicial killing and provision of material support and resources for such killing was reasonably certain to—and indeed intended to—cause injury to plaintiffs. The Court now discusses reasonable estimates of the different damages sought under the FSIA-created cause of action. The damages awarded are laid out in the tables in the separate Order and Judgment issued this date.

B. Damages Awarded in This Case.

Survivors of the Beirut Bombing are entitled to damages for the pain and suffering they endured and continue to endure to this day, as well as damages for economic losses. The one estate plaintiff is entitled to damages for economic loss suffered by decedent's estate. Family members of victims of the Beirut Bombing are entitled to solatium. Finally, those plaintiffs who have requested them are entitled to punitive damages.[6]

1. Pain and Suffering of Survivors.

Damages for surviving victims are determined based upon an assessment of such factors as "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life."

[6] Plaintiffs and intervenors have also requested that the Court award costs of suit. Plaintiffs and intervenors do not need to specifically request that the Court award costs. Instead, they should prepare a bill of costs per Local Civil Rule 54.1.

Peterson II, 515 F. Supp. 2d at 52 n.26 (quotation omitted). "In awarding pain and suffering damages, the Court must take pains to ensure that individuals with similar injuries receive similar awards." *Peterson II*, 515 F. Supp. 2d at 54. Thus in *Peterson*, the Court granted a baseline award of $5 million to individuals suffering such physical injuries as compound fractures, severe flesh wounds, and wounds and scars from shrapnel, as well as "lasting and severe psychological pain." *Id.* The Court was willing to depart upward from this baseline to between $7.5 and $12 million in more severe instances of physical and psychological pain, such as where victims suffered relatively more numerous and severe injuries, were rendered quadriplegic, partially lost vision and hearing, or were mistaken for dead, as was one soldier who "was placed in a body bag [and] buried alive in a morgue for four days until someone heard him moaning in pain." *Id.* Similarly, the Court was willing to depart downward to between $2 and $3 million where victims suffered only minor shrapnel injuries or minor injury from small-arms fire. *Id.* With these considerations in mind, the Court now analyzes the recommendations of the special master.

Concerning Armando J. Ybarra, the special master recommended that the Court not deviate from its damages framework. Rpt. of Special Master Pursuant to Order of Reference Concerning Count V (Armando J. Ybarra) 11, June 10, 2010, ECF No. 55 [hereinafter Ybarra Rpt.]. In the immediate aftermath of the attack, Mr. Ybarra was buried under concrete for several hours, which cut and crushed—but did not break—his right leg, causing severe muscle and nerve damage. *Id.* at 5–6. The rest of his body was riddled with shrapnel. *Id.* at 6. Today, he has no feeling in his lower right leg; his injured limb is prone to recurrent infection; he requires the assistance of a cane, walker, or wheelchair for mobility; and suffers from depression and post-traumatic stress disorder. *Id.* at 7–8. These injuries are serious and life-long and

comport with the sorts of injuries for which a baseline award is made. Accordingly, the Court agrees that Mr. Ybarra should receive $5,000,000.00 in damages for pain and suffering.

Concerning John E. L'Heureux, the special master recommended that the Court depart upward from its baseline to $7.5 million. Rpt. of Special Master Pursuant to Order of Reference Concerning Count VI (John L'Heureux) 20, July 15, 2010, ECF No. 56 [hereinafter L'Heureux Rpt.]. In the immediate aftermath of the Attack, Mr. L'Heureux suffered severe and multiple injuries, including an "impaled rectum by an object that split his sphincter and pierced his stomach; [a] crushed kidney; [a] fractured pelvis; [a] detached ear; cuts and abrasions over 80 to 90% of his body; [the wearing of a] colostomy bag for 11 months[,] and damage to his legs and feet that confined him to a wheelchair for many months." *Id.* at 5. Today, he continues to suffer from severe physical and emotional pain, including anxiety and post-traumatic stress disorder. *Id.* at 7. He is 100% disabled. *Id.* at 20. Given the severity, number, and life-long deleterious effect of Mr. L'Heureux's injuries, the Court agrees that an upward departure is warranted. Accordingly, the Court agrees that Mr. L'Heureux should receive $7,500,000.00 in damages for pain and suffering.

2. Economic Loss of Survivors.

In addition to pain and suffering, the plaintiffs who survived the attack proved to the satisfaction of the special master, and thus to the satisfaction of the Court, lost wages resulting from permanent and debilitating injuries suffered in the attack. *See* Ybarra Rpt. 11–12, L'Heureux Rpt. 20–21. Based on economic reports submitted to the special master by a forensic economist, the master recommends that Mr. Ybarra should receive $2,123,146.00 and that Mr. L'Heureux should receive $3,197,369.00. in damages for economic loss. The Court agrees.

3. Economic Loss of Decedent.

The one estate plaintiff—Estate of Terrance Rich—has proven to the satisfaction of the special master, and thus to the satisfaction of the Court, loss of accretions to the estate resulting from the wrongful death of decedent in the attack. *See* Rpt. of Special Master Pursuant to Order of Reference Concerning Count IV (Elizabeth Murphy and Bryan Harris), July 22, 2010, ECF No. 57 [hereinafter Rich Rpt.]. Based on economic reports submitted to the special master by a forensic economist, the master recommends that the estate should receive $1,545,055.00. The Court agrees.

4. Solatium of Family Members.

Solatium is awarded to compensate the "the mental anguish, bereavement[,] and grief that those with a close personal relationship to a decedent experience as the result of the decedent's death, as well as the harm caused by the loss of the decedent['s] society and comfort." *Belkin*, 667 F. Supp. 2d at 22 (citing *Dammarell v. Islamic Republic of Iran*, 281 F. Supp. 2d 105, 196–97 (D.D.C. 2003); *Elahi*, 124 F. Supp. 2d at 110). "In determining the appropriate award of damages for solatium, the Court may look to prior decisions awarding damages for intentional infliction of emotional distress as well as to decisions regarding solatium." *Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15, 29 (D.D.C. 2008) (citing *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 (D.D.C. 2006) (Lamberth, J.)) (Lamberth, C.J.).

In *Peterson*, this Court adopted the framework set forth in *Heiser* as "an appropriate measure of damages for the family members of victims who died" in the Beirut bombing. *Peterson II*, 515 F. Supp. 2d at 51 (citing *Heiser I*, 466 F. Supp. 2d at 271–356). That framework awarded valid claims brought by parents and siblings of deceased servicemen $5 million and $2.5 million each, respectively. Relatives of surviving servicemen received awards

valued at half of the awards to family members of the deceased: $2.5 million for parents, and $1.25 million for siblings. Although "the loss suffered" by family members of victims "is undeniably difficult to quantify," *Heiser I*, 466 F. Supp. 2d at 269, a review of similar cases shows that the damages framework as laid out in *Peterson* has strong precedential support, *see, e.g.*, *Valore*, 700 F. Supp. 2d at 85; *Brewer*, 664 F. Supp. 2d at 57–58; *Heiser II*, 659 F. Supp. 2d at 27 n.4; *Anderson v. Islamic Republic of Iran*, 90 F. Supp. 2d 107, 113 (D.D.C. 2000); *Eisenfeld*, 172 F. Supp. 2d at 10–11; *Flatow*, 999 F. Supp. at 29–32.

These numbers, however, are not set in stone. The Court may award greater amounts in cases "with aggravating circumstances," *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90, 108 (D.D.C. 2006) (Lamberth, J.), indicated by such things as "[t]estimony which describes a general feeling of permanent loss or change caused by decedent's absence" or "[m]edical treatment for depression and related affective disorders," *Flatow*, 999 F. Supp. at 31. Such departures are usually relatively small, absent "circumstances that appreciably worsen" a claimant's "pain and suffering, such as cases involving torture or kidnapping" of the party to whom extreme and outrageous conduct was directed. *Greenbaum*, 451 F. Supp. 2d at 108 (departing upward from $8 million to $9 million in a widower's award upon consideration of "the severity of his pain and suffering due to the loss of his wife and unborn first child"). Conversely, the Court may depart downward in amount where the relationship between the claimant and the decedent is more attenuated. *See, e.g.*, *Smith ex rel. Smith v. Islamic Emirate of Afghanistan*, 262 F. Supp. 2d 217, 236 (S.D.N.Y. 2003). With these considerations in mind, the Court now analyzes the recommendations of the special master.

The special master found no circumstances compelling a deviation form the damages framework for any family-member plaintiffs or intervenors in this case. Rich Rpt. 15;

L'Heureux Rpt. 20. The Court agrees. Although these plaintiffs and intervenors suffered great personal loss at the death of family members dearly loved, none suffered the particularly devastating and uniquely acute suffering warranting an upward departure, such as nervous breakdowns or self-destructive behavior. *See, e.g.*, *Valore*, 700 F. Supp. 2d at 86. Accordingly, the Court agrees that Elizabeth Murphy, mother of deceased serviceman Terrance Rich, should receive $5,000,000.00; Bryan Harris, half-brother of decedent Terrance Rich, should receive $2,500,000.00; Mary E. Wells, mother of surviving serviceman John L'Heureux, should receive $2,500,000.00; and Kerry M. L'Heureux and Jane L. L'Heureux, sisters of surviving serviceman John L'Heureux, should each receive $1,250,000.00.

5. Punitive Damages.

Only two plaintiffs—Armando J. Ybarra and John E. L'Heureux—have specifically requested an award of punitive damages. Pls.' Compl. ¶¶ 27, 32. Neither the other plaintiffs nor intervenors have made a similar request in their pleadings. *See* Pls.' Compl; Ints.' Compl. "A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c). Accordingly, in this default judgment, the Court will only award punitive damages to those plaintiffs who have demanded them.

Punitive damages, only recently made available under the revised FSIA terrorism exception, serve to punish and deter the actions for which they awarded. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 61; *Heiser II*, 659 F. Supp. 2d at 29–30; *Acosta*, 574 F. Supp. 2d at 30 (citing Restatement (Second) of Torts § 908(1)). Punitive damages are not meant to compensate the victim, but instead meant to award the victim an amount of money that will punish outrageous behavior and deter such outrageous conduct in the future. In determining the proper punitive damages award, courts evaluate four factors: "(1) the character of the

defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants." *Acosta*, 574 F. Supp. 2d at 30 (citing *Flatow*, 999 F. Supp. at 32 (citing Restatement (Second) of Torts § 908)). The nature of the defendants' acts and the nature and extent of the harm defendants intentionally caused are among the most heinous the Court can fathom. *See Bodoff*, 424 F. Supp. 2d at 88 (determining a bus bombing, for which Iran was held liable, to be "extremely heinous").

"The defendants' demonstrated policy of encouraging, supporting and directing a campaign of deadly terrorism is evidence of the monstrous character of the bombing that inflicted maximum pain and suffering on innocent people." *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 278 (D.D.C. 2003) (concerning a separate bus bombing for which Iran and MOIS were held liable). As to deterrence and wealth, Dr. Patrick Clawson, an expert on Iranian terrorism activities, has testified in several cases on the amounts of punitive damages that would serve to deter Iran from supporting terrorist activities against nationals of the United States. *See, e.g.*, *Flatow*, 999 F. Supp. at 32; *Heiser II*, 659 F. Supp. 2d at 30. Two numbers are at issue: the multiplicand—the amount of Iran's annual expenditures on terrorist activities—and the multiplier—the factor by which the multiplicand should be multiplied to yield the desired deterrent effect.

Concerning the multiplicand, most recently in *Valore*, Dr. Clawson declared that "the financial material support provided by Iran in support of terrorism is in the range of $300 million to $500 million a year." Clawson Aff. ¶ 4, *Valore*, No. 03-cv-1959 (D.D.C. Mar. 31, 2010), ECF No. 58. Dr. Clawson based his range on Iran's provision of approximately $200 million in direct cash assistance to Hezbollah in 2008, as well as the provision since 2006 of "many tens of millions of dollars" worth of sophisticated weaponry, including some 40,000 rockets. *Id.* ¶ 3.a.

(citing U.S. Dep't of State, *Country Reports on Terrorism 2008*, at 183 (2009), *available at* http://www.state.gov/documents/organization/122599.pdf.). The Court adopted $200 million as the multiplicand in *Valore*, as that value was "based on the known amount of Iran's annual cash assistance specifically to Hezbollah and does not require the Court to waver from its neutrality concerning terrorism financing by hazarding a guess as to the value of any non-cash assistance also provided to Hezbollah." 700 F. Supp. 2d at 88.

Concerning the multiplier, Dr. Clawson testified in *Flatow* that a factor of three times Iran's annual expenditures on terrorism "would be the minimum amount in punitive damages that would affect the conduct of the Islamic Republic of Iran, and that a factor of up to ten times its annual expenditure for terrorism must be considered to constitute a serious deterrent to future terrorist activities aimed at United States nationals." 999 F. Supp. at 32. In *Heiser*, however, he recommended a factor between three and five, as opposed to three and ten. 659 F. Supp. 2d at 30. In both cases, the Court conservatively adopted the lower multiplier of each range: three.

In the action to which this action is related—*Valore*—the Court adopted five as the multiplier. 700 F. Supp. 2d at 89. This higher number was "based on the suggestion by Dr. Clawson that Iran has recently begun to more actively participate in litigation in the United States and elsewhere." *Id.* (citing Clawson Aff. ¶ 6). The Court emphatically pronounced that "Iran's support of terrorism against citizens of the United States absolutely will not be tolerated by the courts of this nation" and that "adopting five as a multiplier . . . will hold Iran to account." *Id.* Multiplying $200 million by five, the Court awarded punitive damages in the amount of $1 billion. *Id.*

Today, the Court is faced with a quandary. Punitive damages have already been awarded in *Valore*, which concerned the same incident as this case—the Beirut Bombing. Recurrent

awards in case after case arising out of the same facts can financially cripple a defendant, over-punishing the same conduct through repeated awards with little additional deterrent effect, and awards in several cases arising out of the same facts can differ, creating anomalous results. 1 Linda L. Schlueter, *Punitive Damages* § 4.4(A)(5)(b)–(c) (5th ed. 2005); 1 John J. Kircher & Christine M. Wiseman, *Punitive Damages, Law and Practice* § 5:26 (2d ed. 2000); *see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003) (noting concern for "multiple punitive damages awards for the same conduct"). How, then, should the Court award punitive damages in a subsequent case arising out of the same facts as a former case in which punitive damages have already been awarded? The Supreme Court's recent decision in *Philip Morris USA v. Williams* offers insight into how the Court might answer this question. 549 U.S. 346 (2007).

In *Phillip Morris*, the Court held that punitive damages may only be awarded to punish and deter actions of defendants with respect to the plaintiffs in the particular case in which punitive damages are sought. *Id.* at 356–57. Punitive damages may not be issued to punish harm caused to others who are not party to a suit, as such damages would constitute an unconstitutional taking of property from defendants without due process. *Id.* at 349, 353–55. In other words, "under *Phillip Morris* punitive damages awards are personal to each plaintiff." Byron G. Stier, *Now It's Personal: Punishment and Mass Tort Litigation After* Philip Morris v. Williams, 2 Charleston L. Rev. 433, 454 (2008). *Phillip Morris* has thus largely solved the problem of multiple punishments: when punitive damages are personal to plaintiffs in a given case, they are not necessarily excessive when awarded in a subsequent case, even arising out of the same facts, if the subsequent case involves different plaintiffs. *See id.* at 454–58.

But the question still remains: What is the proper punitive-damages award in such a subsequent case? If the Court were to simply re-enter an award of $1 billion in this case, which involves only two plaintiffs who have requested punitive damages, after having previously entered the same amount in the consolidated *Valore*, which involved approximately 100 plaintiffs who requested punitive damages, the disparity between the two cases' plaintiffs' shares of punitive damages would be severe. The Court is not concerned with that disparity from the perspective of compensation. Punitive damages are not intended to compensate plaintiffs. The fact that there may be variance from one case to another, even where those cases arise out of the same facts, such that some plaintiffs enjoy a higher award than others, raises no concern for inequitable compensation. The Court is concerned, however, with that disparity from the perspective of the post-*Phillip Morris* plaintiff-personal purpose of punishment.

Where there is more than one case arising out of the same facts, an analysis of the amount of punitive damages awarded compared with the amount of compensatory damages awarded can be used to gauge the amount of punishment and deterrence the Court considered necessary based on the injuries plaintiffs to that case suffered. Where injuries suffered by separate plaintiffs in a second case are of the same sort as those suffered by plaintiffs in the first, there is no reason to deviate in the second case from the conclusion reached in the first as to the ratio of punitive-to-compensatory damages. For example, if a court awarded $1,000,000.00 in punitive damages and $100,000.00 in compensatory damages in the first case, it makes sense to award $10.00 in punitive damages for every $1.00 awarded as compensatory in the second. Adopting this method, the Court will comport with its conclusions made in *Valore* as to the appropriate level of punishment and deterrence needed, while also ensuring that punitive damages are personal to plaintiffs in this case.

In *Valore*, the Court awarded damages in the amount of $1,290,291,092.00, of which $290,291,092.00 was compensatory and $1,000,000,000.00 was punitive. Revised Order and Judgment, *Valore*, No. 03-cv-1959 (D.D.C. Sept. 20, 2010), ECF No. 71. The Court thus concluded that for every dollar's worth of injury as measured by compensatory damages, the appropriate amount needed to punish defendants for and deter defendants from terrorism was $3.44 (when rounded to the nearest cent). The Court retains that ratio today.[7] Accordingly, for

[7] In *Exxon Shipping Co. v. Baker*, the Supreme Court recently limited a punitive damages award to a maximum of a 1:1 ratio with compensatory damages awarded. 128 S. Ct. 2605 (2008). In *Valore*, the Court distinguished *Exxon*:

> To the extent that some plaintiffs may share in a punitive damages award higher than their compensatory award, and thus with a ratio of punitive to compensatory damages higher than 1:1, *Exxon* is distinguishable from this case. First, *Exxon* concerned punitive damages awarded under maritime law, not the FSIA; the Supreme Court explicitly limited its holding, noting that "a 1:1 ratio . . . is a fair upper limit *in such maritime cases*." [*Exxon*, 128 S. Ct.] at 2633 (emphasis added). But more importantly, the Supreme Court decided a case "with no earmarks of exceptional blameworthiness in the punishable spectrum." *Id.* When "the supertanker Exxon Valdez grounded on Bligh Reef off the Alaskan coast, fracturing its hull and spilling millions of gallons of crude oil into Prince William Sound," the defendants acted recklessly but "without intentional or malicious conduct." *Id.* at 2612, 2631 n.23, 2633. The Supreme Court left open the possibility that defendants who do act with intent or malice might be subject to higher ratios of punitive to compensatory damages. See *id.* at 2633.
>
> This is a case where higher ratios are clearly warranted. Those harboring a deep-seeded and malicious hatred of the United States who intentionally commit terroristic murder of American military servicemen deserve to be punished at a ratio significantly higher than 1:1 with the compensatory damages for which they are otherwise liable. Moreover, even after Exxon, this District has repeatedly awarded punitive-damages awards in FSIA cases without concern that such damages may have been awarded at a higher ratio than 1:1 with compensatory damages. *See, e.g.*, *Heiser II*, 659 F. Supp. 2d at 30–31; *Acosta*, 574 F. Supp. 2d at 30–31; *Brewer*, 664 F. Supp. 2d at 59 ("There is no reason to depart from settled case law regarding the amount of punitive damages in terrorism cases.").

Valore, 700 F. Supp. 2d at 89 n.17; *see also Duckworth v. U.S. ex rel. Locke*, 2010 WL 1499490, at *16 n.14. (D.D.C. Apr. 15, 2010). The Court retains this distinction today.

those plaintiffs who have prayed for punitive damages, the Court will award $3.44 in punitive damages for every dollar of compensatory damages awarded to each such plaintiff.

VIII. Conclusion.

Iran and MOIS are responsible for the deaths and injuries of hundreds of American servicemen; are liable for physical, emotional, and pecuniary injuries suffered as a result; and deserve to be punished to the fullest legal extent possible. In a recent interview, Iranian President Mahmoud Ahmadinejad declared that he and his country "oppose terrorism. We strongly oppose" it. Interview by George Stephanopoulos, Chief Political Correspondent, ABC News, with Mahmoud Ahmadinejad, President, Iran (May 5, 2010), *transcript available at* http://abcnews.go.com/print?id=10558442. The Court sincerely hopes that the compensatory damages awarded today help to alleviate plaintiffs' and intervenors' injuries, and that the punitive damages also awarded inspire Iran to adhere to its professed opposition to terrorism.

A separate Order and Judgment consistent with these findings shall issue this date.

Signed by Royce C. Lamberth, Chief Judge, on September 24, 2010.